A

PP

v.

LOW KIAN BOON & ORS

B

HIGH COURT MALAYA, SHAH ALAM
KN SEGARA J
[CRIMINAL TRIAL NO. 45-3-2004]
25 APRIL 2006

C ***CRIMINAL LAW:*** *Penal Code - Sections 302, 34 - Murder - Common intention - Whether proved - Circumstantial evidence - Accused in blood-stained shirt soon after deceased was attacked - Blood-stained shirt with deceased's DNA recovered from accused's house - Whether sufficiently incriminating - Defence - Total denial - Whether not believable*
D *- Whether offence one of culpable homicide not amounting to murder - Penal Code, ss. 34, 302, 304*

CRIMINAL LAW: *Penal Code - Sections 302, 34 - Murder - Deceased attacked with 22-inch parang - Accused attempted to flee after initial non-fatal attack - Whether showing no intention to kill - Whether*
E *not guilty of murder - Whether only committing culpable homicide not amounting to murder - Penal Code, ss. 34, 302, 304*

The deceased herein was attacked in his house and died from the injuries sustained. Following the attack, the 1st accused, together
F with the 2nd and 3rd child (the deceased's stepdaughters) and the 4th child were charged with the murder thereof under s. 302 read with s. 34 of the Penal Code. Before the learned judge, the prosecution did not adduce any direct evidence to prove the attack. Nonetheless, at the end of the prosecution's case,
G evidence were proffered that the 1st accused and the 4th child were in the vicinity of the deceased's house on the night in question, that soon after the attack they were picked up from a nearby Shell station by SP17, SP18 and SP19 in a car driven by SP19 and blood stains were seen on their shirts, that SP18
H overheard the 4th child telling SP17 *inter alia* that he and the 1st accused "telah membunuh bapa seseorang", and that a blood-stained shirt carrying the DNA profile of the deceased was seized from the 1st accused. The learned judge ruled that the circumstantial evidence as adduced were sufficient to incriminate
I the 1st accused and the 4th child, and called upon them to enter their defence under s. 302 Penal Code. The learned judge

however found no evidence to link the 2nd and 3rd child to the alleged offence, and hence acquitted and discharged them without calling for their defence. In their defence, the 1st accused and the 4th child denied that they had been to the deceased's house on the night in question. They further sought to shift all blame for the murder to one 'Ivan', whom they said was the one who purchased the murder weapons and intruded into the deceased's house at about the time of the attack. Ivan, however, was never called as a witness and both the 1st accused and the 4th child were clueless as to his whereabout. This being the defence story, at the end of the defence case, questions thus arose as to whether the prosecution had discharged its burden of proving its case beyond reasonable doubt, and if so, what was the appropriate sentence to be meted out against the duo.

Held (convicting 1st accused & 4th child of culpable homicide not amounting to murder):

(1) There was no evidence of any plan between the 1st accused and the 2nd child, who is said to be his girl friend, to commit the offence, or of the 3rd child meeting the 1st accused and the 4th child at the house on the night in question. There was also no evidence that the 3rd child was aware of the crime or that the 2nd and 3rd child had facilitated the entry of the 1st accused, the 4th child or any other person into the house of the deceased for the commission of the offence. Likewise, although there was evidence that the 2nd child had met the 1st accused immediately after she had sneaked out of the house through the window of her room, there was no evidence that that was a pre-arranged meeting between them. Hence, in all the circumstances, the 2nd and 3rd child cannot be attached with any common intention to commit the offence as charged. Further, in the absence of any circumstantial or direct evidence to show that they had inflicted any of the injuries on the deceased, they must be acquitted without their defence being called. (paras 94, 97 & 98)

(2) Since blood stains were seen on the shirts of the 1st accused and the 4th accused by SP18 when they entered the back of the car driven by SP19, and since a shirt was also recovered from the flat of the 1st accused which had the deceased's blood stains on it – there was strong circumstantial evidence to incriminate them both with the offence charged. There has

A to be a satisfactory explanation as to how and why the blood stains were found on their shirts. Further, the fact that such blood stains were seen on their shirts so soon after the crime was committed, irresistibly led to an inference that they were in the house of the deceased at the time the deceased was B attacked and, therefore, the perpetrators of the crime as well. (paras 87 & 99)

(3) The character Ivan is a figment of the imagination of the defence. It was a character introduced by the defence in an C attempt to cast doubts on the prosecution's case. On the totality of the evidence, the mysterious character Ivan does not exist and he played no part whatsoever in the events that unfolded. (paras 169 & 172)

D **(4)** Upon the testimony especially of SP20, the wife of the deceased, it could be deduced that the 1st accused and the 4th child were inside the 2nd child's room on the night in question and one of them had attacked the deceased when he went to investigate who the intruders were. It was also clear that the 1st accused and the 4th child had attempted to flee E the house after the initial attack, but was held back by the deceased (downstairs) who seemed determined to either apprehend or put up a fight with his attackers. Unfortunately, such of the deceased's action had triggered a further attack on him during which a fatal injury had (unintentionally) been F inflicted on him. (paras 175 & 176)

(5) Notwithstanding the 23 injuries found on the deceased and the nature of the weapon used (a 22-inch parang), there was clearly no intention on the part of the 1st accused and the G 4th child to kill the deceased. Hence, they cannot be found guilty of the offence of murder under s. 302 Penal Code. On the facts, they were however guilty of culpable homicide not amounting to murder under s. 304 Penal Code (second limb). (para 177)

H

(6) Considering the respective plea in mitigation and the probation reports, and the serious nature of the offence, the 1st accused is sentenced to 10 years' imprisonment with effect from the date of his arrest and the 4th child is ordered to be I imprisoned for 10 years also from the date of his arrest. (para 186)

[Order accordingly.]

Case(s) referred to:
Koay Teng Soon & Anor v. PP [2000] 1 CLJ 677 CA ***(refd)***
Namasiyiam & Ors v. PP [1987] 1 CLJ 540; [1987] CLJ (Rep) 241 SC ***(refd)***
PP v. Loo Choon Fatt [1976] 2 MLJ 256 ***(refd)***
Tan Bok Yeng [1972] 1 MLJ 214 ***(refd)***

Legislation referred to:
Penal Code, ss. 34, 302, 304

For the prosecution - Salim Soib (Ariff Azami Hussin with him) DPPs
For the 1st accused - Raymond Yap
For the child no 2 & 3 - Karpal Singh (Ram Karpal Singh with him); M/s Karpal Singh & Co
For the child no 4 - V Ananth (Jagjit Singh, Manjit Singh Dhillon & Sarjit Singh Sidhu with him); M/s Ananth & Partners

Reported by WA Sharif

JUDGMENT

KN Segara J:

[1] Low Kian Boon (1st accused) together with three other children, Ku Sue Yin (1st child), Ku Sue Kin (2nd child) and Tan Pei Yan (4th child) were charged for the murder of one Hans Herzog. The offence was alleged to have been committed on 12 November 2003 between 12.20am and 12.45am at house No. 30, Jalan USJ 1/4E, Petaling Jaya.

[2] The charge reads as follows:

> Bahawa kamu bersama-sama pada 12 November 2003, jam antara 12.20 pagi hingga jam 12.45 pagi, di rumah No. 30, Jalan USJ 1/4E, didalam daerah Petaling, didalam Negeri Selangor Darul Ehsan, didalam meneruskan niat bersama kamu seperti yang ditakrifkan dibawah Seksyen 34 Kanun Keseksaan, telah melakukan bunuh dengan menyebabkan kematian keatas HANS HERZOG (PASSPORT No. E7042195) dan dengan itu kamu telah melakukan kesalahan yang boleh dihukum dibawah Seksyen 302 Kanun Keseksaan yang dibaca bersama Seksyen 34 Kanun yang sama.

[3] In this trial before me, the prosecution called 28 witnesses. At the end of the prosecution's case, the 2nd and 3rd child were acquitted but the 1st accused and 4th child were called upon to enter their defence. Both, the 1st accused and the 4th child, elected to give evidence on oath.

[4] There is no dispute that the body found at No. 30, Jalan USJ 1/4E, Petaling Jaya, on 12 November 2003, is that of the deceased HANS HERZOG and that he died of "multiple cut wounds to head and neck" as testified by SP28, Professor Kasinathan Nadeson, the forensic pathologist who carried out the autopsy on 13 November 2003, on the body of the deceased, which was identified by the deceased's wife, Ulau Joe Yok (SP20).

[5] The case for the prosecution rests essentially on circumstantial evidence.

[6] SP20, together with the deceased and her two teenage daughters, Ku Sue Yin and Ku Sue Kin (the 2nd and 3rd child herein) lived at No. 30, Jalan USJ 1/4E, on 11 November 2003. It is a double-storey terrace house. The 2nd and 3rd child are the step-daughters of the deceased. They were aged 14 and 16 years, respectively, in 2003. The deceased was 59 years old.

[7] SP20 married the deceased on 25 December 2000. She has no children from this marriage. Both the daughters from her earlier marriage (2nd and 3rd child) were schooling, in 2003.

[8] On 11 November 2003, between 7pm and 8pm, SP20, together with the deceased and her two children, had dinner in the house as a family. After dinner, at about 10pm, both her daughters went to bed upstairs, whereas she and her husband remained downstairs, watching TV in the sitting room. At about 11pm, there was a call on the house phone downstairs. Her husband picked up the phone, but there was no response from the other end. After that, at about 11pm, SP20 and her husband went to bed upstairs.

[9] There are 3 rooms upstairs – the master bedroom, occupied by SP20 and her husband, and two other bedrooms, each occupied by the 2nd and 3rd child, respectively.

[10] At about 12 midnight, there was a knock on SP20's bedroom door. She got up and went to the door, but there was nobody at the door. Then, she went to Ku Sue Yin's room to

check if she was alright (okay), because her daughters normally knock on her room door when they are not feeling well. She opened Ku Sue Yin's bedroom door slowly. Suddenly, a guy attacked her from inside the room using some weapon. She became very scared and closed the door. SP20 opened the door a second time to check if her daughter was in the room. She heard somebody hide behind the room door. SP20 closed the door and ran to her bedroom.

[11] Her husband got up and asked her what was happening. She told him a guy in Ku Sue Yin's room attacked her and that he had used a weapon. She told her husband not to go to Ku Sue Yin's room. However, her husband rushed to Ku Sue Yin's room. She did not follow him but remained in her bedroom. Then she heard her husband crying in pain. Her husband came back to their bedroom. She saw her husband's face had been slashed. He picked up a T-shirt and ran downstairs, but before he ran downstairs he asked her to get help. She remained in the bedroom and closed the door. Then, she opened her bedroom door a second time, and saw a guy running downstairs. It was not the same guy she saw the first time in Ku Sue Yin's room. The staircase light was on. When she first opened the door of Ku Sue Yin's room, the light in the room was not switched on. The guy she saw running downstairs realized she had looked at him, because she was at her room door. Then the guy came up. So, SP20 closed her bedroom door, and locked herself inside. She then shouted for help from her bedroom window. She was in her room for about 10 minutes. Then her elder daughter, that is, Ku Sue Kin (the 3rd child, herein) called out for her at the bedroom door.

[12] SP20 opened her bedroom door and saw Ku Sue Kin standing outside SP20's bedroom door. She asked Ku Sue Kin where she was before this. Ku Sue Kin replied she was sleeping in her bedroom. She then inquired from Sue Kin as to the whereabouts her father. Ku Sue Kin replied she did not know. After that Ku Sue Kin and SP20 ran downstairs. SP20 saw her husband lying on the floor in a pool of blood. His face was cut. His arm was broken. His neck was cut. He could not talk anymore.

[13] SP20 asked Ku Sue Kin to call for the police but Sue Kin told her mother that she did not know the police number. Ku Sue Yin (the 2nd child) was not in the house at that time and SP20 inquired from Ku Sue Kin as to the whereabouts of her sister. She told SP20 that Ku Sue Yin may have gone out earlier.

[14] SP20's neighbours arrived. The police also arrived. The police checked the house. They also checked the body of her husband. The police took the body of her husband to the hospital.

[15] The police also checked the compound of SP20's house. The police went to all the rooms upstairs. They found a weapon in Ku Sue Yin's bedroom. The police showed SP20 the weapon and asked her if she had seen the weapon before. She told them that she had not seen the weapon before. She testified the weapon shown to her was a big parang. The parang was about 1½ to 2 feet in length. She did not know where the police found the parang in Ku Sue Yin's room. She identified exh. P22 to look like the parang shown to her by the police.

[16] SP20 testified that when she first opened the door of Ku Sue Yin's room, the guy she saw was very small and his hair was straight. At that time he was sitting on the bed and he jumped to attack her, but there was no injury to her. She did not see anybody else in the room other than the guy sitting on the bed. The second time she opened the door was to double-check whether Ku Sue Yin was in the room. This time she did not see anybody in the room, not even the guy whom she saw sitting on the bed and who had attempted to attack her when she opened the door the first time. The second time she opened the door was only a few seconds after she had opened it for the first time.

[17] SP20 testified that the 2nd guy she saw that day was a little bigger than the first guy. She was not sure of his height. She testified she did not see the 2nd guy holding any weapon.

[18] Briefly, SP20, had seen 2 guys in the house, one sitting on the bed inside Ku Sue Yin's room who had attempted to strike her with a weapon and another who had run downstairs and then returned upon realizing that she had seen him but was not holding any weapon in his hand.

[19] It is most unfortunate for the police and the prosecution that SP20 appears to be withholding vital information as to the identity of the 2 guys she saw in the house. The staircase light was on at the time she saw the 2nd guy running downstairs and then back-tracking towards her before she shut herself up in her bedroom. The face of the 2nd guy ought to have been registered vividly and indelibly in her mind, for re-call at any time, to assist police investigations, notwithstanding the fact she was afraid and panicky. Unfortunately, this does not appear to have been the case. Nevertheless, the fact remains a man appears to have lost his life unnecessarily. The perpetrators of the crime should be punished. All red herrings should be swept aside.

[20] SP23, ASP Ratnakumar a/l Ramasamy,is the investigating officer. At about 1am, on 12 November 2003, he was informed of Subang Jaya Report No. 8248/2003 (exh. P52) regarding a murder at No. 30 Jalan USJ 1/4E, Subang Mewah, Subang Jaya. He proceeded to the scene, after instructing police personnel from the Cawangan Jenayah, Unit Forensik and Unit Bantuan Anjing to go to the scene to assist him in the investigations.

[21] SP23 arrived at the scene at about 1.30am. The house was a double-storey end lot. When he entered the house he saw the victim lying under the stairs, between the living area and the study. He found the victim lying prone, with plenty of blood near him. He examined the victim. He found several cuts on the hand, nape, waist and face. The victim was dead. He instructed the police photographer to take photographs (P4A, B, D & E).

[22] After examining the victim he proceeded upstairs. He found blood stains on the stairs leading up into one of the bedrooms. He examined the said bedroom and found blood on the floor and wall of the said bedroom. He instructed the police photographer to take photographs of the room he had entered (P4G, H, I & J). This room was in-front of the victim's room. It was Ku Sue Yin's room.

[23] SP23 found a parang on the ledge of the window of the said room. He instructed the police photographer to take a photograph of the parang in the position it was seen and found at the window (P4K). He seized the parang (P22). There were blood stains on the parang. He found a black coloured sheath of a parang on the bed in the room. It was under a pillow on the bed in the room.

[24] SP23 instructed the police photographer to take a photograph of the sheath as seen under the pillow when found (P4J). He seized the sheath (P24). He examined the sheath. There were blood stains on the sheath. The sheath was obviously that of the parang (P22).

[25] The room had only one window. He examined the window and instructed the police photographer to take photographs of the window (P4C & P4K). P4C is a photograph of the window taken from outside the house and P4K is a photograph of the window taken from inside the house. The window had a grille but the grille was not locked.

[26] There was another room upstairs. It was the room of Ku Sue Kin. He examined this room too, but there was no evidence of any blood in the room and he did not seize anything from this room.

[27] SP23 spoke to the wife of the deceased and the daughter of the deceased he met at the living room. He found the wife (SP20) in a state of shock and crying. She told him what happened that night. The daughter, Ku Sue Kin (the 3rd Child) was also in a state of shock, but remained silent.

[28] SP23 identified the victim from the passport handed to him by the wife, as HANS HERZOG, an Australian citizen. He returned the passport to the wife, after the post-mortem, on 13 November 2003.

[29] SP23 testified that there is a door in the front and back of the house and he found both doors did not reveal any evidence of having been forced open for entry by anyone into the house that night. The wife of the deceased (SP20) and the daughter of the deceased (Ku Sue Kin) did not complain of any loss of any valuables from the house that night.

[30] SP23 testified that the police dog unit arrived at the scene in the early hours of the morning of 12/11/2003, and one of the sniffer dogs had smelt a trail from the back of the house till the Shell station at USJ 1/29.

[31] SP23 testified the first arrest in this case was that of Tan Pei Yan who had come to the Police Station Subang Jaya, on 12 November 2003, together with his father and lawyer, at about 8.30pm. Tan Pei Yan (the 4th child) was arrested by D/Kpl 84277

Adam bin Othman at about 8.45pm, *vide* arrest report Subang Jaya No. 8272/2003 (P71), and subsequently handed over to SP23. At about 11.35pm, on 12 November 2003, Ku Sue Yin (2nd Child) was arrested by SP23 at the house of the victim, *vide* arrest report Subang Jaya No. 8273/03 (P69). On 13 November 2003, at about 12.30am, SP23 arrested Ku Sue Kin (3rd child) at Balai Polis Subang, *vide* arrest report Subang Jaya No. 8275/03 (P70). Finally, on 15 November 2003, at about 1.55pm, SP23 arrested Low Kian Boon (1st accused) at 102 Jalan PJS 7/15, Sunway, *vide* Sg. Way Report No. 13636/03 (P68).

[32] SP23 testified that the 1st accused, at the time of his arrest, lived in the flat with his mother and his sister. SP23 went to the 1st accused's flat that day together with Insp. Chia Yen Khee (SP26). At the 1st accused's flat, SP23 seized a shirt, a jeans and a pair of shoes, for purpose of investigations. The jeans was a "PUMA" brand and the T-shirt "BONTTON CLASSIC". The shoes was "REEBOK". He testified he found evidence of blood on the pair of jeans and T-shirt but not on the shoes.

[33] As counsel for the 1st accused had made an issue that the T-shirt (exh. P30) produced in court was not the T-shirt seized from the flat of 1st accused by SP23, I think it would be convenient at this stage for me to determine this issue since the T-shirt (exh. P30) will prove to be a very important piece of evidence to link the 1st accused with the alleged crime.

[34] Counsel for 1st accused attempted to take advantage of a slip in the oral testimony of SP23 when describing the colour of the T-shirt he seized, coupled with his impulsive answers to the learned DPP when exh. P30 was shown to him for identification.

[35] SP23 testified under examination-in-chief:

> Saya ada periksa ketiga-tiga barang yang saya rampas di flat tersebut. Saya dapat kesan darah pada seluar jeans jenama PUMA dan baju berwarna biru jenama BONTTON CLASSIC. Pada kasut tidak ada apa-apa kesan darah.
>
> Barang-barang rampasan tersebut saya simpan didalam pejabat saya.
>
> Semasa rampasan dibuat kakak dan emak OKT.1 berada di flat tersebut.

A Barang-barang rampasan saya masuk dalam plastik dan menutup dengan cellotape dan membawa balik sendiri ke pejabat saya. Saya masuk dalam plastik berasingan. Di pejabat saya, saya simpan dalam locker berkunci. Saya boleh cam ketiga-tiga barang tersebut.

B [P30, P32 dan P34 dirujuk kepada saksi]

P30 adalah sehelai T-shirt berwarna kelabu jenama BONTTON CLASSIC. T-shirt ini bukan yang saya rampas di flat OKT.1. (emphasis added)

C P32 (dicamkan) adalah seluar jeans jenama PUMA yang saya rampas daripada baldi di bilik tandas flat OKT.1.

P34 (dicamkan) adalah sepasang kasut jenama REEBOK yang saya rampas di flat OKT.1.

D [P10B dirujuk kepada saksi]

Gambar P10B menunjukkan tempat dimana rampasan *baju jenama BONTTON CLASSIC sebenarnya warna kelabu* yang saya rampas dari atas sofa. (emphasis provided)

E *Pada awalnya saya kata baju itu berwarna biru. Saya merujuk ke ID dan terdapat kesalahan menaip* dimana saya menulis "baju berwarna biru".

Pada hari itu saya tidak merampas apa-apa baju berwarna biru. Saya pasti saya merampas baju berwarna kelabu. (emphasis added)

F

[36] He also testified that he sent the exhibits he had seized to the chemist. He testified:

Saya ada hantar barang-barang kes kepada Ahli Kimia. Saya hantar barang-barang kes ke Ahli Kimia pada 18/11/2003 jam 10.37 pagi. Saya berjumpa dengan Ahli Kimia Dr. Seah (SP.2).

G

Saya telah menghantar 8 bungkusan bertanda A, A1, A2, A3, A4, B1, B2 dan B3.

A berisi sampel darah mangsa.

H

A1 parang panjang berdarah.

A2 sarung parang.

A3 seluar pendek mangsa.

I A4 kain pelekat mangsa.

B1 baju jenama Bontton Classic.

B2 jeans jenama PUMA berwarna biru.

B3 kasut sports jenama REEBOK berwarna hitam.

Sampel darah ialah sampel yang saya terima daripada patologis selepas post-mortem.

Seal pada sampel darah masih intact.

Saya masukkan barang-barang kes ke dalam sampul surat dan tanda sampul surat sebagai A1, A2, A3, A4, B1, B2 dan B3. Saya ada sealkan sampul surat tersebut. Saya sealkan pada 18/11/03 – sebelum hantar ahli kimia. Saya menggunakan seal Polis Di Raja Malaysia No. 132.

Kandungan A1 dan A2 adalah yang saya ambil dari rumah kejadian pada 12/11/2003.

Kandungan A3, A4 saya memperolehi dari pathologist.

Kandungan B1, B2 dan B3 adalah yang saya rampas daripada flat No. 102 Jalan PJS 7/15, Sunway.

Setiap sampul surat saya ada seal dengan seal PDRM No. 132.

Dr. Seah ada menerima barang-barang tersebut daripada saya. Saya juga ada serahkan borang POLIS 31 kepada Dr. Seah.

Anggota saya yang sediakan POLIS 31. Anggota tersebut ialah D/L/Kpl Christina. Dia tidak terlibat dalam masukkan barang kes ke dalam sampul surat.

[ID12 dirujuk kepada saksi]

Tandatangan saya terdapat pada ID12 (saksi menunjukkan tandatangan beliau di mukasurat 2)

[ID12 ditandakan P12].

[37] [Exhibit P12 is BORANG POLIS 31 which is the formal requisition form addressed to the chemist and given to the chemist by the police together with the exhibits for examination]

[38] SP23 further testified:

Saya tidak menyemak sebelum saya tandatangan P12.

Tarikh (19/11/2003) di mukasurat 1 P12 adalah satu kesilapan taip oleh anggota saya D/L/Kpl Christina.

A Lampiran A pada P12 juga disediakan oleh anggota saya D/L/Kpl Christina dan saya juga tandatangan pada lampiran A.

L/Kpl Christina sedia P12 berpandu kepada deraf saya.

[Lampiran A P12 butiran 6 dirujuk kepada saksi]

B *Barang kes ini (butiran 6) bukan yang saya hantar kepada ahli kimia. Yang sebenarnya saya hantar baju berwarna kelabu dan bukannya yang berwarna biru.*

[Sg Way Report 13636/2003 ditandakan P68 dan dirujuk kepada
C saksi]

P68 (dicamkan) adalah lapuran polis saya berkenaan tangkapan dan rampasan.

Dalam P68 saya ada sebut secara spesifik barang-barang yang
D saya telah rampas di flat tersebut dimana tangkapan dilakukan keatas OKT.1.

Dalam P68 saya ada sebut alamat flat dimana rampasan telah dilakukan. No flat ialah 102 Blok E, Jln PJS 7/15, Bandar Sunway, Petaling Jaya.

E Semalam dalam keterangan saya telah sebut alamat seperti "105" oleh kerana terlupa.

Dr. Seah ada serahkan resit penerimaan barang kes.

F [P13 (dicamkan) adalah resit penerimaan tersebut.

Saya ada terima semula barang-barang kes pada 19/3/2004.

[39] SP26 Insp. Cheah Yen Khee inter-alia testified:

G Saya bersama ASP Ratna telah pergi ke sebuah rumah beralamat No. 102 Blok E, Jln. PJS pada 15/11/2003 jam lebihkurang 12.55 tengahari. ...

Tujuan kami pergi ke rumah ini ialah untuk buat tangkapan dan rampasan. ...

H Kita ada buat rampasan sehelai baju T-shirt, sehelai seluar jeans dan sepasang kasut. Rampasan itu dibuat oleh ASP Ratna Kumar. ...

Baju T-shirt dirampas diatas kerusi sofa, seluar jeans itu dirampas
I didalam sebuah baldi isi air dalam bilik air dan kasut di luar rumah.

... OKT.1 ada di tempat mana barang-barang kes dijumpai. OKT.1 ditunjukkan barang-barang kes tersebut. ...

Saya ada lihat seluar jeans, baju T-shirt dan kasut.

Warna T-shirt tersebut ialah kelabu jenama BUTTON CLASSIC. Saya tak ingat apa-apa tanda lain pada baju tersebut.

[P30 dirujuk kepada saksi]

P30 (dicamkan) adalah baju T-shirt yang dirampas atas sofa.

[40] SP2 Dr. Seah Lay Hong, the chemist testified, *inter alia*:

On 18/11/2003 at 10.37 am I was at the Department of Chemistry, Petaling Jaya. On that day and time I received from ASP Ratna Kumar a/l Ramasamy 5 envelopes which were respectively marked "A", "A2", "A4", "B1" and "B2" and 3 other packages which were respectively marked "A1", "A3" and "B3".

[Envelope marked "B1" dirujuk kepada saksi]

Envelope "B1" bears the laboratory number sticker (PJ)FOR 9414/03-0. The security labels are intact.

(Envelope "B1" ditandakan – P29)

[Saksi diminta membuka envelop "B1"]

Inside envelope "B1" is a short-sleeved grey coloured T-shirt with BONTTON CLASSICS label. There were human blood stains.

[Grey T-shirt – ditandakan P30] (emphasis added)

[40] In the light of the evidence of SP2 and the evidence of SP23 and SP26, I have no hesitation in finding that the grey T-shirt exh. P30 is the very same T-shirt which was seized on 15/11/03 by ASP Ratna from 1st accused's flat. As to why SP23 described the T-shirt seized as "blue" and as to why his initial response that P30 was not the T-shirt seized by him, was clarified by him immediately. The fact the T-shirt seized was in fact a grey T-shirt is corroborated by the police report P68 and the evidence of SP26 who had witnessed the seizure by SP23. Furthermore, SP23 had packed and sealed the shirt he had seized in envelope marked "B1" and SP2 had testified envelope "B1" had contained a grey T-shirt.

[41] There was no evidence at all that SP23 had seized more than one T-shirt from the flat of the 1st accused on 15 November 2003 to infer or impute that the police are withholding any material evidence.

[42] Any suggestion that exh. P30 is not the T-shirt seized by SP23 from the 1st accused's flat on 15 November 2003, is untenable. Any imputation that the police have fabricated the evidence relating to this exh. P30, is totally unfounded, upon a proper and careful evaluation of the evidence given by SP23, SP26 and SP2, in the context of its discovery and seizure at the 1st accused's flat on 15 November 2003, its custody, control and packing, thereafter, by SP23, the delivery of same to the chemist (SP2), and the chemist report (P18) thereon.

[43] In the above circumstances, I am entirely satisfied P30 produced in court is the very same T-shirt seized by SP23 at the 1st accused's flat on the date of his arrest, on 15 November 2003, after his return from Johore Bharu, notwithstanding SP23's initial response in examination-in-chief that P30 was not the T-shirt he seized at the 1st accused's flat on 15 November 2003, upon same being shown to him by the learned DPP, for identification in court.

[44] Foong Mae Sze (SP8) is a student aged 16 years and a friend of Ku Sue Kin and are school-mates. She has known Ku Sue Kin for two to three years and considers Ku Sue Kin as a close friend. SP8 also knows Ku Sue Yin but not as a close friend. She lives about 7km away from Ku Sue Kin's house.

[45] Sathiya a/l Sangli, who was not called as a prosecution's witness but made available to the defence at the close of the prosecution's case, is a friend of Foong Mae Sze and Ku Sue Kin.

[46] Foong Mae Sze testified that on 11 November 2003, at about 11pm, she and Sathiya went on her bicycle from her house to Ku Sue Yin's house to meet Ku Sue Kin behind her house because Ku Sue Kin had told her that she wanted to "curi keluar". When Foong Mae Sze and Sathiya arrived at the back of the house, at about 11pm, she saw Ku Sue Kin at the back window of a room upstairs. SP8 asked her whether she was ready to leave. Ku Sue Kin replied in the negative. Then she saw Ku Sue Yin climb out of the same window, on to the ledge and, thereafter, a brick wall close to the window ledge. However, she slipped and fell. Nevertheless, thereafter, she climbed over the

brick wall at the back of the house on to the back lane, where Foong Mae Sze and Sathiya were waiting to meet Ku Sue Kin. Ku Sue Kin then informed SP8 from the window that her parents had woken up and asked them to leave.

[47] SP8 testified:

> Kemudian Sue Kin memberitahu saya bahawa ibu bapanya sudah bangun dari tidur dan beliau suruh kami beredar dari tempat itu. "Kami" bermaksud saya, Sathiya dan Sue Yin.

[48] The three of them then went to a shop nearby to have tea. From the back of the house they walked towards the front of the house to go to the shop. She testified that Ku Sue Kin's house was within sight from the shop.

[49] SP8 testified, that on the way to the shop, she saw a male Chinese person near Ku Sue Kin's house and, when Ku Sue Yin walked passed this person, Ku Sue Yin stopped and talked with him. At that time she and Sathiya were about 20 feet behind them. She could not remember for how long Sue Yin and this person had a conversation. The said person hugged Sue Yin. SP8 had sight of his appearance although she could not remember the clothes he wore. She testified the person later jumped into the house (compound) from the front of Sue Yin's house.

[50] She testified, *inter alia*:

> ... Dari kedai ini boleh nampak rumah Ku Sue Kin.
>
> Dalam perjalanan dari belakang rumah Ku Sue Kin ke kedai tersebut saya nampak seorang lelaki di luar berhampiran rumah Ku Sue Kin.
>
> ...
>
> Apabila Sue Yin melepasi lelaki tersebut, lelaki tersebut bercakap dengan Sue Yin. Sewaktu itu saya dan Sathiya ada lebihkurang 20 kaki belakang mereka. Ada cahaya tetapi keadaan samar-samar. Saya tak ingat berapa lama Sue Yin dan lelaki itu bercakap.
>
> Lelaki tersebut memeluk Sue Yin. Saya tidak dengar perbualan diantara Sue Yin dan lelaki tersebut. Mereka berhenti dan bercakap. Semasa mereka bercakap saya dan Sathiya berdiri belakang mereka pada jarak lebihkurang 20 kaki. Saya tak ingat pakaian lelaki tersebut. Saya ada nampak wajah lelaki tersebut.

A Beliau adalah orang Cina. Saya tak pasti umur lelaki tersebut. Saya tak tahu berapa lama saya nampak wajah lelaki tersebut. Lelaki itu ada panjat masuk dari hadapan rumah Sue Yin.

Saya menuju dari arah belakang ke hadapan rumah semasa pergi ke kedai minuman.

B

Di kedai minuman saya ada tanya Sue Yin berkenaan lelaki tersebut. Sue Yin kata jangan banyak tanya. Dia tidak memberitahu siapa lelaki ini.

C Selepas saya nampak lelaki itu panjat masuk saya ada nampak semula lelaki itu pada malam yang sama iaitu semasa beliau panjat keluar; iaitu semasa saya sedang minum itu. Jarak saya agak jauh pada masa itu dari lelaki tersebut. Saya boleh cam lelaki tersebut. Dia ada di Mahkamah hari ini (OKT.1 dicamkan).

D *Saya boleh cam lelaki tersebut kerana saya ada nampak wajahnya semasa beliau bercakap dengan Sue Yin.*

Selepas beliau panjat keluar lelaki tersebut pandang sekeliling dan kemudian panjat masuk semula ke dalam rumah. Selepas itu saya tidak nampak apa-apa lagi.

E **[51]** From the evidence of SP8, it is beyond dispute that at about 11.30pm, on 11 November 2003, the 1st accused was near the house of the victim and had jumped into the compound of the house of the victim. The dock identification of the 1st accused by SP8, as well as at the identification parade, puts to rest any F dispute about the identity of the male person who hugged Sue Yin and talked to Sue Yin near the victim's house when Sue Yin, SP8 and Sathiya were proceeding from the back of the house to the shop near by to have drinks, notwithstanding Sue Yin's apparent reluctance to give SP8 any particulars as to the identity G of the person she had met and talked with.

[52] SP8 was not sure how long they were at the shop having drinks. When a male Chinese came up to their table and he was introduced to her by Sue Yin. Chen Boon Chin (SP13) was H identified by SP8 as the person introduced to her at the said shop by Sue Yin. He was also known as Kenny. Sue Yin talked to Chen Boon Chin and then they all got into Chen Boon Chin's car. Just before she got into the car she heard the scream of a woman coming from the direction of Sue Kin's house.

I

[53] SP8 testified:

> Saya tak pasti berapa lama kami bertiga minum di kedai tersebut.
>
> Semasa kami bertiga minum ada seorang lelaki Cina datang ke meja kami. Saya tahu siapa lelaki Cina itu. Sue Yin memperkenalkan lelaki Cina itu kepada saya. Saya boleh cam dia.
>
> [Chen Boon Chin dipanggil dan dicamkan]
>
> Saya tidak tahu dari mana beliau datang. Chen Boon Chin bercakap dengan Sue Yin. Kemudian kami naik kereta Chen Boon Chin. Saya naik kereta Chen Boon Chin kerana Sue Yin suruh saya dan Sathiya naik sekali.
>
> Sebelum naik kereta itu saya dengar jeritan seorang perempuan dari rumah Sue Kin.

[54] SP13, Chen Boon Chin, aged 33 years, is about the only witness called by the prosecution who is not a teenager, with whom Sue Yin seems to have been in the company, on the date of the incident. He had known Sue Yin for about eight months prior to 12 November 2003.

[55] SP13 testified that on 12 November 2003, at about 12.10am, while he was in his house at No. 37 Jalan USJ 20/1E, he received a phone call from Sue Yin. She invited him to go out for a drink at a restaurant in front of her house. He did not know why she invited him out for a drink. She has, on previous occasions, too, invited him out for a drink, in the early hours of the morning.

[56] SP13 went to the said restaurant, driving his motorcar Proton Waja CBE 8163. He met Sue Yin at the restaurant at about 12.20am, on 12 November 2003. There were two other persons with Sue Yin. He was introduced to them by Sue Yin as Mae Sze and Sathiya. They were seated at a table outside the restaurant. They set and talked at the table till about 12.30am. Suddenly, he heard a voice crying out for help, coming from the vicinity of Sue Yin's house. He was not sure whether the voice was that of a male or female.

[57] SP13 testified that after he heard the cry for help, Sue Yin hurriedly asked Sathiya and Mae Sze to get into his car to go for a drive, without any destination in mind. SP13 asked Sue Yin, "What had happened?" Sue Yin did not reply. SP13 drove his car towards the direction of USJ 14. Sue Yin borrowed his hand-

A phone and made 3 or 4 attempts to contact her sister (Ku Sue Kin) but was not successful. SP13 testified he knew Sue Kin and identified her, in Court, as the 3rd Child. He testified Sue Yin did not tell him where Sue Kin was at the time she attempted to telephone her using his hand-phone, when he stopped his car B beside a main road, outside the vicinity of Sue Yin's housing area. Sue Yin was seated in the front passenger seat whilst Sathiya and Mae Sze were seated behind. When Sue Yin failed to contact her sister over the phone, SP13 testified he heard Mae Sze tell Sue Yin that the voice crying out for help heard earlier was the voice C of her sister, but Sue Yin did not respond to that remark. After that, he carried on driving his car towards the direction of USJ 14 and 5 minutes, thereafter, Mae Sze told Sue Yin that she and Sathiya wanted to return to the restaurant in order to collect her bicycle. Sue Yin then requested SP13 to turn back towards the D junction leading to Sue Yin's housing area. He did, as requested, and stopped the car at the junction, where Mae Sze and Sathiya got off the car. He then proceeded driving the car towards the direction of Giant, together with Sue Yin.

E **[58]** SP13 testified, that whilst going towards Giant and passing through one of the junctions, Sue Yin's house could be seen, and that junction was about 300 feet from Sue Yin's house. He stopped his car at the junction and saw a crowd had gathered near Sue Yin's house, as though something had happened. Sue F Yin was still with him in the car. Hardly one minute, thereafter, he proceeded again towards Giant, and before he reached Giant, he turned left into a lane, and from there he could see the room of Sue Yin's sister. He stopped his car in that lane and heard Sue Yin speaking to herself, "Why is my sister's room light G switched on?" ("Kenapa lampu bilik tidur kakaknya terpasang?"). He stopped his car there for about one minute and then proceeded driving towards Taipan. He testified, that from the time Sue Yin attempted to contact her sister using his hand-phone and till the time he stopped at the lane, from where the room of Sue H Kin could be seen, he had asked Sue Yin, along their journey, what has happened, and Sue Yin replied, "Nothing" ("Tiada apa-apa").

[59] Whilst driving towards the direction of Taipan, SP13 asked Sue Yin where she wanted to go, as he had to go to work that I day. Sue Yin then informed him that she had a friend waiting for her at Summit.

[60] SP13 dropped off Sue Yin behind Summit, at about 1am, but did not see Sue Yin's friend waiting for her there. He returned home.

[61] SP13 testified that Sue Yin had told him that her step father did not treat her well, and she was not satisfied with him. He did not permit her to leave the house after school, and at night. He testified:

> Sue Yin pernah ceritakan kepada saya hal berkenaan bapa tirinya. Sue Yin menceritakan bahawa bapa tirinya tidak layan beliau dengan baik. Menurut Sue Yin bapa tirinya tidak layan beliau dengan baik. Menurut Sue Yin bapa tirinya tidak benarkan beliau keluar rumah selepas sekolah dan waktu malam. Beliau ada memberitahu saya beliau tidak puashati dengan bapa tirinya. Saya tak ingat bila dia ceritakan kepada saya.

[62] On 12 November 2003, at about 2.30am, Lee Kim Fatt (SP15) and Chong Chia Wing (SP14) were at the Pusat Snooker in PJS 7, and at about that time Lee Kim Fatt received a call from Sue Yin. He had known Sue Yin for about two weeks before 12 November 2003. He identified the 2nd Child, in court, as "Sue Yin". SP15 testified that Sue Yin had requested him to come and fetch her at USJ 1. SP14 and SP 15 met Sue Yin at a restaurant. She was alone. From that restaurant they went to another restaurant behind the flat of the 1st accused, as Sue Yin wanted to meet the 1st accused. SP15 testified that Sue Yin was 1st accused's girl friend.

[63] The restaurant was closed for business. They sat at a table outside the restaurant and were joined later by another friend of SP15, called Ah Keong. Not very long after that, the 1st accused arrived in a car with four or five persons inside.

[64] The 1st accused got off the car to join them, and the car left, together with the remaining occupants therein. At about 6am, all of them left the restaurant.

[65] Wong Wing Hing, SP17, testified that he had known a person called Dexter for two or three years before 12 November 2003. Dexter was his friend. He identified the 4th Child, in court, as Dexter.

[66] SP17 also testified that one Jimmy is a friend of Dexter. He testified that before 12 November 2003 he had seen Jimmy 3 or 4 times and only greeted him, "Hello?" He identified the 1st accused, in court, as Jimmy.

[67] SP17 testified that on 12 November 2003, at about 12.30am, he was drinking tea in Sunway, together with Lim Sein Lock (SP19 (Ah Kok)) and Ng Hon Boon (SP18 (Ah Boon)). When they were about to leave the place, between 12.30am and 1am, Ah Boon's telephone rang. Ah Boon answered the call and then handed over the phone to SP17 to talk to the caller. It was his friend Dexter on the line, and he told him there is a bit of a problem. Dexter requested SP17 to come and search for him in the vicinity of Permai. SP17 asked Dexter what was the problem, but Dexter told him to come and search for him first, and then he would tell him about the problem.

[68] Together with Ah Kok and Ah Boon, SP17 went in Ah Kok's car to search for Dexter. Ah Kok drove the Proton Wira. Ah Boon sat in front whilst Wing Hing (SP17) sat in the back of the car. While they were on the way towards Giant, Dexter telephoned Ah Boon and told him that he was at the Shell station near Giant.

[69] SP17 testified that when they reached the Shell station they could not find Dexter. So he used Ah Boon's hand-phone to contact Dexter. He asked Dexter where he was. Dexter replied he was at the Shell station but they still could not find him. He then saw Dexter come out of the Shell station. He did not see from where Dexter came out because it was very dark. Dexter ran towards the direction of Ah Kok's car, together with another person, that is, Jimmy. Both of them got into the back of the car.

[70] SP17 testified:

> Pada 12/11/2003 jam 12.30 pagi saya sedang minum teh di sekitar Sunway. Saya minum teh bersama seorang bernama Ah Kok dan seorang bernama Ah Boon. ...
>
> ... semasa kami hendak beredar antara 12.30 pagi dan 1.00 pagi, telefon Ah Boon telah berbunyi.
>
> ...

Saya telah cakap dengan Dexter melalui telefon Ah Boon. Dexter kata dia ada sedikit hal dan suruh saya pergi carinya didalam Giant – maksud saya sekitar Permai. Saya ada tanya dia, "Apa hal?" Dia suruh saya cari dia dahulu dan selepas itu dia akan ceritakan hal itu.

...

Saya bersama dengan Ah Kok dan Ah Boon menaiki kereta Ah Kok untuk mencari Dexter. Ah Kok yang memandu kereta itu. Ah Boon duduk di depan dan saya duduk di belakang.

...

Semasa kami dalam perjalanan hendak pergi ke sekitar Giant, Dexter pun telah menelefon Ah Boon dan memberitahunya bahawa beliau berada di stesen minyak Shell berdekatan Giant.

Semasa kami tiba di stesen minyak Shell, kami tidak berjumpa dengan Dexter. Jadi saya menggunakan telefon bimbit Ah Boon untuk menghubungi Dexter. Saya tidak boleh ingat nombor telefon Dexter.

Melalui telefon bimbit saya menanya Dexter dimana beliau berada. Dia kata dia berada di stesen minyak Shell tetapi kami masih tidak dapat carinya dan lepas itu saya nampak Dexter keluar daripada stesen minyak Shell. Saya tidak nampak dari mana beliau keluar sebab waktu itu sangat gelap. Dia berlari kearah kereta Ah Kok. Lepas itu dia pun menaiki kereta Ah Kok.

Semasa saya nampak Dexter beliau ada dengan seorang lagi. Orang itu juga berlari ke arah kereta Ah Kok. Orang itu juga menaiki kereta Ah Kok. Mereka masuk ke dalam bahagian belakang kereta Ah Kok. Pada masa itu saya ada di bahagian belakang kereta Ah Kok.

Saya pernah lihat orang yang masuk bersama-sama Dexter, sebelum hari itu. Saya kenal orang itu. Orang itu bernama Jimmy. Sebelum 12/11/03 saya pernah lihat Jimmy tetapi tidak berapa kenal dia. Saya pernah lihat beliau lebih dari 3 atau 4 kali. Saya hanya ada menegur beliau "Hello".

Jimmy adalah kawan Dexter. Saya boleh cam Jimmy. Beliau ada di Mahkamah hari ini (OKT.1 dicamkan).

Dalam kereta saya duduk di paling kiri sekali bahagian belakang. Dexter duduk di bahagian tengah, manakala Jimmy duduk di sebelah kanan. *Mereka duduk sahaja dalam kereta*. Kereta itu pun bertolak dari stesen minyak Shell ke rumah saya. Dexter kata ada hal nak berkata dan hendak berkata di rumah saya. Rumah saya jauhnya lebihkurang 15 minit dari setesen minyak Shell.

Dalam tempoh perjalanan ke rumah saya, saya telah menanya Dexter apakah halnya. *Dexter memberitahu saya ia bersama-sama dengan Jimmy pergi memukul orang.* Lepas itu kami pun sampai di rumah saya.

Semasa saya masih dalam kereta saya telah menanyakan Dexter. "Siapakah orang ia pukul?" Dia kata bapa orang. Saya tidak tanya beliau apa-apa lagi.

Rumah saya berada di SS 17. Semasa dalam rumah saya Dexter pun telah mandi di rumah saya *dan pakaiannya kotor seperti ada darah. Darah itu dibaju Dexter.* Saya tidak boleh ingat baju yang dipakai oleh Dexter hari itu pada awal pagi sebelum dia mandi. Selepas Dexter mandi dia tidak memakai baju yang sama. *Selepas mandi dia memakai baju saya.* Dia ada pakai seluar malam itu – seluar panjang sebelum mandi. Saya tidak ingat warna seluar panjang itu. *Selepas mandi dia tidak pakai seluar yang sama. Selepas mandi saya tidak tahu dia pakai seluar siapa.*

Saya tidak tahu pakaian yang sebelum Dexter mandi itu diletak dimana oleh Dexter.

...

Saya tidak ingat samada Dexter dan Jimmy ada memakai kasut sebelum masuk ke dalam rumah saya.

Setelah Dexter masuk ke dalam rumah saya, dia duduk sebentar, saya berikan dia tuala dan dia pun pergi mandi. Saya memberi tuala kepada Dexter kerana Dexter kata dia hendak mandi kerana pakaiannya kotor dan dia pun minta tuala daripada saya.

...

Selepas Dexter habis mandi dia telah duduk atas sofa bersama saya. Semasa itu saya ada bercakap dengan Dexter. Saya bercakap pasal hal tadi. "Hal tadi" bermaksud hal "pukul memukul" tadi.

Saya tanyakan Dexter "Apakah hal tadi?" *Dia kata dia bersama-sama dengan Jimmy memukul bapa orang.* Saya telah tanya bila dan mana mereka memukul bapa orang. Dia kata pada waktu kami menjemputnya di stesen minyak Shell, dan Dexter juga telah memberitahu saya mereka telah memukul orang di rumah sahabat wanita Jimmy. Dexter kata selepas memukul orang dia pun telah menelefon Ah Boon – iaitu pada masa kami sedang minum teh. Saya telah tanya Dexter apakah maksud "memukul orang". Dia kata dia bersama-sama Jimmy telah memukul orang dan mungkin

secara tidak sengaja telah menyebabkan kematian. Saya telah menanyakan dia, apakah senjata yang digunakannya. Dia kata, "pisau". Semasa Dexter bercakap sama saya, Jimmy tidak bercakap apa-apa.

...

Sebelum ini saya tidak pernah bergaduh dengan Jimmy atau Dexter.

Pada hari itu (12/11/2003) sewaktu saya berjumpa dengan Jimmy di Shell station dan sehingga saya hantar dia ke kedai kopi di Sunway, saya nampak Jimmy pakai baju T-shirt. Saya tak ingat warnanya. Dia memakai seluar jeans – saya tak ingat warnanya.

Jimmy tidak mandi di rumah saya pada hari tersebut. Dia juga tidak salin pakaiannya di rumah saya.

[71] Throughout his evidence in court SP17 was wearing a pair of dark glasses.

[72] Under cross-examination by counsel for the 4th child he testified *inter alia*:

Ada luka di mata kiri saya. Mata kiri saya ialah mata palsu. Saya selalu pakai cermin mata – ada yang cerah dan ada yang gelap.

Saya ada pakai cermin mata pada malam 11/11/03 tetapi tidak ingat samada cermin mata itu cermin mata gelap atau cerah. Cermin mata saya tiada power. Saya pakai hanya untuk fashion.

...

Saya tidak pasti samada saya hilang mata kiri saya pada bulan March atau April tahun 2003 – mungkin hilang mata tersebut pada tahun 2003 sebelum bulan November. ...

Betul semalam saya ada memberi keterangan bahawa Dexter tukar baju selepas mandi.

Soalan: *Cadangkan bahawa Dexter tidak tukar baju di rumah awak tetapi awak ada buat persiapan baju dalam kereta Ah Kok dan baju ditukar oleh Dexter dalam kereta?*

Jawapan: *Tidak setuju.*

[73] SP18, Ng Hon Boon testified that on 12 November 2003 at about 12.30am he was at Sunway Mentari, together with Ah Kok (Lim Sein Lock, SP19), Wong Wing Hing (SP17) and Chee Leng (Pang Tze Ling, DW4) having tea. While all 4 of them were

having tea, SP18 received a telephone call from Dexter, who was trying to contact Wing Hing. SP18 handed his phone over to Wing Hing for Dexter to talk to him. Wing Hing then requested Ah Kok to take them to search for Dexter. They sent Tze Ling back to her house and then went to Shell petrol station at USJ 1 to wait for Dexter.

[74] SP18 testified that, while they were waiting in the car at the petrol station, Dexter came running towards the car together with another male person. He identified this male person as the 1st accused. They both entered into the rear of the car. Dexter looked frightened. After entering the car Dexter said he had killed a person. They proceeded to Wing Hing's house. SP18 testified at Wing Hing's house he slept in the living room but, before he slept, he overheard Dexter telling Wing Hing, that he, together with Jimmy, had killed the father of some person.

[75] SP18 testified that, on the way to Wing Hing's house from the Shell petrol station, he had seen the clothes worn by Dexter and Jimmy. He testified that he saw blood marks on the shirt of Dexter and Jimmy.

[76] Under examination-in-chief SP18 testified, *inter alia*:

> Saya ada nampak pakaian Dexter dan Jimmy sewaktu balik ke rumah Wing Hing dari stesen minyak Shell. Dexter pakai T-shirt. Saya tidak ingat warna T-shirt tersebut. Dia memakai seluar jeans berwarna biru gelap. *Saya nampak kesan darah pada pakaian Dexter – iaitu diatas T-shirt. Buat kali pertama saya nampak T-shirt Dexter mempunyai darah semasa kami berada di stesen minyak Shell USJ 1.*
>
> *Semasa Dexter sampai di rumah Wing Hing, Wing Hing telah memberi sehelai baju kepada Dexter untuk tukar.*
>
> Saya juga ada nampak pakaian Jimmy sewaktu di stesen minyak Shell. Jimmy memakai sehelai T-shirt tetapi saya tidak ingat warnanya. Beliau memakai sehelai seluar panjang dan saya juga tidak ingat warnanya. *T-shirt Jimmy juga mempunyai kesan darah.* Pada hari itu Jimmy ada pakai cermin mata.
>
> ...
>
> Selama saya berkenalan dengan Dexter saya tidak bermusuh dengan beliau. Saya juga tidak bermusuh dengan Jimmy.

[77] When cross-examined by counsel for 1st accused SP18 testified, *inter alia*:

Setuju semasa di stesen minyak Shell saya tidak keluar dari kereta. Setuju Dexter dan Jimmy masuk kereta melalui bahagian pintu belakang kereta.

Soalan: *Katakan awak tidak dapat lihat apa-apa kesan darah pada baju Jimmy?*

Jawapan: *Tidak setuju.*

[78] Under cross-examination by counsel for 4th Child, SP18 testified, *inter alia:*

Setuju bahawa tempat kereta itu diletak di stesen minyak Shell adalah gelap.

Saya tidak ingat berapa lama saya tunggu di stesen minyak Shell. Lepas itu 2 orang masuk ke dalam kereta. Selepas 2 orang itu masuk ke dalam kereta, kereta pun bergerak dan terus pergi ke rumah Wing Hing. *Dalam perjalanan itu saya ada menoleh ke belakang – lebihkurang 2 kali. Saya menoleh ke belakang dan betul-betul lihat belakang – orang belakang. Lampu kereta dalam ada dipasang – semasa pintu kereta dibuka lampu dalam terpasang.*

Saya tidak nampak warna seluar yang dipakai oleh Dexter. Dia pakai T-shirt dan ada kesan darah. Saya rasa apa yang saya nampak adalah kesan darah. Saya tidak tahu macam mana untuk jawab soalan peguam bagaimana saya pasti kesan itu adalah kesan darah.

Soalan: Cadangkan bahawa pada bulan Oktober 2003, Pang Kah Yee sudah jadi kawan rapat kepada Dexter?

Jawapan: Tak setuju.

Soalan: Cadangkan pada bulan Oktober 2003 apabila Pang Kah Yee menjadi teman wanita kepada Dexter awak sudah cemburu?

Jawapan: Tak setuju.

Soalan: Cadangkan sehingga hari ini awak masih cemburu kerana Pang Kah Yee masih jadi teman wanita pada Dexter?

Jawapan: Saya tidak setuju.

Soalan: Cadangkan awak sudah jatuh maruah dan merasa malu dikalangan kawan-kawan awak atas perkara tersebut?

Jawapan: Tidak setuju.

Soalan: *Cadangkan oleh sebab perkara itu awak telah memberi keterangan palsu terhadap Dexter?*

Jawapan: *Saya tidak membohong di Mahkamah.*

[79] Under re-examination by the learned Deputy Public Prosecutor SP18 testified, *inter alia*:

Saya pernah nampak darah sebelum kejadian ini.

Benar, saya nampak macam darah pada baju Jimmy dan Dexter hari kejadian. Saya menoleh ke belakang kereta semasa duduk di hadapan kereta itu untuk tempoh 10 saat. Benar saya menoleh ke belakang kereta 2 kali. Benar sewaktu saya menoleh ke belakang saya nampak macam kesan darah atas baju Jimmy dan Dexter.

Pada pukul 3.00 atau 4.00 pagi hari 12/11/2003 saya tidur lena di rumah Wing Hing. Saya masuk ke dalam ruang tamu rumah Wing Hing pada jam lebihkurang 1.00 pagi 12/11/2003 dari rumah sehingga tertidur lena pada pukul 3.00 atau 4.00 pagi.

...

Saya tiada perasaan dendam terhadap Pang Kah Yee atau pun Dexter.

Betul Pang Kah Yee adalah teman wanita Dexter. Saya tidak merasa sakit hati atas Pang Kah Yee jadi teman wanita Dexter.

[80] Dr. Kasinathan Nadesan, SP28, performed the post-mortem examination of the deceased, Hans Herzog, on 13 November 2003, at about 9.30am. The body was identified by the police and the wife of the deceased, Ulau Joe Yok. He prepared a post-mortem report (P67).

[81] SP28 testified that deceased was a big male Caucasian weighing 117 Kg and 190 cm in length. He testified that the deceased had 23 injuries on his body, almost all of them confined to the upper part of the body. Injury No. 11 was a "gaping deep incised wound 17 cm long placed horizontally on the upper back of neck and his wound had cut the underlying 2nd and 3rd crucial vertebrae and also the spinal cord completely cut". He testified that injury No. 11 by itself could lead to death and also the other injuries that were found namely No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19 and 20 could have collectively caused the death, leaving injury No. 11 out. Injury No. 11 is necessarily a fatal injury and the rest are fatal in the ordinary course of nature.

[82] SP28 testified, that all the cut wounds were caused by a sharp-cutting, long-bladed weapon and, in his opinion, a classical weapon of that nature would be a "parang". When exh. P22 was shown to him, he testified it is a very heavy, sharp, long, straight-bladed weapon and, is a weapon likely to have caused all the injuries on the deceased.

[83] SP28 testified that the cause of death is "multiple cut wound to head and neck".

[84] Under cross-examination by counsel for the 1st accused, SP28 testified that he could not rule out the possibility more than one weapon of similar nature was used to attack the deceased. He also could not rule out that there was more than one assailant. He testified that most of the injuries to the right face and head were inflicted, after the deceased had fallen down, with the right side of the head exposed/directed upwards.

[85] At the close of the prosecution's case, upon a careful examination of all the evidence produced by the prosecution and the evaluation of the credibility of the witnesses, notwithstanding some apparent inconsistency in the evidence of some witnesses in the narration of events, their observation or non observation as to time or other details, which might be considered relevant by one party but not by another (depending on whether such evidence is considered in isolation or in the context of the totality of other evidence touching on the issue), I find the following as established beyond reasonable doubt:

1) that on 11 November 2003, the deceased, together with his wife (SP20) and her 2 daughters (the 2nd and 3rd child), had dinner together as a family in their house No. 30 Jalan USJ 1/4E between 7pm and 8pm;

2) that 2nd and 3rd child went to bed upstairs at about 10pm. Each occupied a separate room on their own;

3) that the deceased and his wife were watching TV downstairs after dinner. At about 11pm there was a phone call on the house-phone downstairs. The deceased answered the phone but, there was no response from the other end by the caller;

4) the deceased and his wife went upstairs to sleep in the master bedroom, at about 11pm;

5) the landing light was not switched off;

A 6) the 2nd child (Ku Sue Yin) made a telephone call to Chen Boon Chin (SP13) at about 12.10am, on 12 November 2003 from her house, inviting him to meet her to have a drink at a restaurant, very close to her house; SP13 accepted the invitation and proceeded in his car to the restaurant from his B house;

7) the 2nd child climbed out of the window of her room hurriedly immediately after her call to SP13; (the only reasonable inference from the evidence of SP13 with regard to C the time of the call from the 2nd child and, the evidence of SP20 that there was a knock on her bedroom door at about 12 midnight);

8) the 1st accused was in the vicinity of the deceased's house at about 12 midnight, as he was met by the 2nd child while D walking from the back-lane of the house to the restaurant nearby, to meet SP13;

9) the 3rd child (Ku Sue Kin) did not leave the house, after going to bed on 11 November 2003, as planned with Foong E Mae Sze (SP8), who had came to meet her at the back-lane of the house between 11pm (11 November 2003 and 12.10am (12 November 2003);

10) that there was a knock on the bedroom door of the deceased F and his wife at about 12 midnight, on 11 November 2003;

11) that the deceased's wife (SP20) got up and went to the door but, there was nobody at the door;

12) that the staircase light was on;

G

13) that SP20 went to the 2nd child's room to check whether she was okay and, she opened the door of the child's room slowly; the light in the room was not switched on; suddenly, a guy attacked her from inside the room using some weapon; H she became scared and closed the door; she opened the door a second time to check if her daughter was in the room; she heard somebody hide behind the room door; she closed the door and ran to her bedroom;

I 14) that the deceased got up and asked SP20 what was happening; SP20 told him a guy attacked her in Ku Sue Yin's room; she told him he had used a weapon;

15) that SP20 told the deceased not to go to Sue Yin's room; A

16) that the deceased rushed to Ku Sue Yin's room; SP20 did not follow the deceased but, remained in her bedroom;

17) SP20 heard the deceased crying in pain; B

18) that the deceased came back to the master bedroom;

19) that SP20 saw deceased's face had been slashed; the deceased picked up a T-shirt, asked SP20 to get help, and ran downstairs; C

20) that SP20 remained in her bedroom and closed the door;

21) that SP20 had opened the door and saw a guy running downstairs; that it was not the same guy she saw the first time she opened Ku Sue Yin's room door; D

22) that the guy had realized SP20 had looked at him because she was at her room door;

23) that the guy then came back, up the stairs; SP20 closed her bedroom door and locked herself inside; she then shouted for help from the window; she was in her room for about 10 minutes and then Ku Sue Kin (3rd child) called for her at her room door; E

24) that SP20 opened the room door, and asked Ku Sue Kin where she was, before this; F

25) that Ku Sue Kin told her that she was sleeping in her room;

26) that SP20 asked Ku Sue Kin for her father's whereabouts; she replied she did not know; G

27) that Ku Sue Kin was standing outside SP20's door when SP20 first saw her;

28) that SP20 and Ku Sue Kin ran downstairs and saw the deceased lying on the floor, in a pool of blood; H

29) that on 12/11/03, police found a blood stained parang (P22) on the ledge of the window of Ku Sue Yin's bedroom;

30) that on the bed, in Ku Sue Yin's room, was found a blood stained sheath of a parang (P24); I

A 31) that the cause of death of the deceased was "multiple cut wound to head and neck";

32) that P22 is a very heavy, sharp, long, straight- bladed weapon and, is a weapon likely to have caused all the injuries found
B on the deceased;

33) that the blood stains, on the parang (P22) and sheath (P24),were that of the deceased;

34) that on 12 November 2003, between 12 am and 1pm, Wong
C Wing Hing received a call from Dexter, the 4th child, requesting him to search for him in the vicinity of Permai as he was faced with a problem;

35) that SP17 (Wong Wing Hing), SP18 (Ng Hon Boon) and
D SP19 (Lim Sein Lock) went to a Shell station at Subang Permai in "search" of Dexter;

36) that at the Shell station, Dexter and the 1st accused (Jimmy) came running from behind the Shell station and entered the
E back of SP19's car.

37) that SP18 saw blood marks, on the T-shirt of Dexter and Jimmy, while they were at the Shell station, when he turned his head and looked at the back of the car for about 10 seconds, upon Dexter and Jimmy entering the back of the car;
F

38) that from the Shell station, Dexter and Jimmy went to SP17's house, arriving at about 1am, on 12 November 2003, in the car driven by SP19;

G 39) that at the house of SP17, Dexter had a bath and a change of shirt; Dexter wore a shirt of SP17 after his bath; that SP17 observed the shirt worn by Dexter, before his bath, appeared to be dirty, as if stained in blood; that SP17 did not know where Dexter had placed the clothes he had worn, prior to
H his bath;

40) that the T-shirt (P30) was seized from 1st accused's house on 15 November 2003, the day of his arrest;

41) that the T-shirt (P30) had blood stains which blood stains
I were that of the deceased;

42) that the dog "DUKE", from the dog unit, had traced the scent of a person or persons from the back of the house of the deceased, along a route that led to a Shell petrol station, about 1000 meters away;

[86] In the circumstances, there was incontrovertible evidence that 1st accused and 4th child were in the vicinity of the deceased's house, between 12.10am and 12.30am, on 12 November 2003, because 1st accused was seen by SP8 and, thereafter, 1st accused and 4th child were picked up from the Shell station (which was about 1000 meters from the house of the deceased) by SP17, together with SP18 and SP19, in the car driven by SP19.

[87] Since blood stains were seen on the shirts of the 1st accused and 4th child, by SP18, when both of them entered the back of the car, coupled with the undisputed fact that the 4th child had changed his shirt (which was blood stained and dirty) and the recovery of a shirt, which had the deceased's blood stains on it, at the flat of the 1st accused, on 15 November 2003, there was strong circumstantial evidence to incriminate them with the offence charged. There has to be a satisfactory explanation as to how and why the blood stains were found on their shirts.

[88] At the close of the prosecution's case there was no iota of evidence against the 2nd and 3rd child.

[89] The 1st accused, together with 2nd, 3rd and 4th child were charged for the offence of murder under s. 302 Penal Code, read together with s. 34 Penal Code.

[90] Section 34 of the Penal Code is restricted to common intention and does not embrace any knowledge. It does not require proof that any particular accused was responsible for the commission of the actual offence. Section 34 Penal Code applies when a criminal act is done by several persons in furtherance of the common intention of all. The common intention must be to commit the particular offence. The common intention of one must not only be known to the other but must also be shared by him.

[91] Section 34 of the Penal Code reads:

> When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

[92] In *Namasiyiam & Ors v. PP* [1987] 1 CLJ 540; [1987] CLJ (Rep) 241 his Lordship Syed Agil Barakbah, SCJ stated:

> In law, common intention requires a prior meeting of the minds and presupposes some prior concert. Proof of holding the same intention or of sharing some other intention, is not enough. There must be proved either by direct or circumstantial evidence that there was (a) a common intention to commit the very offence of which the accused persons are sought to be convicted and (b) participation in the commission of the intended offence in furtherance of that common intention.
>
> Where the prosecution case rests on circumstantial evidence, the circumstances which are proved must be such as necessarily lead only to that inference. Direct evidence of a prior plan to commit an offence is not necessary in every case because common intention may develop on the spot and without any long interval of time between it and doing of the act commonly intended. In such a case common intention may be inferred from the facts and circumstances of the case and the conduct of the accused (The Supreme Court (of India) on Criminal Law 1930-1960 by J.K. Soonavala pages 188 to 193).

[93] The prosecution's case against the 1st accused and the 3 children rests entirely on circumstantial evidence. However, the circumstantial evidence against the 2nd and 3rd child was insufficient to establish a *prima facie* case against them at the close of the prosecution's case, upon a maximum evaluation of the evidence.

[94] Liability against the 2nd and 3rd child can only arise if there is a meeting of mind between them, 1st accused and the 4th child to commit the crime of murder. There was no evidence of any plan between the 1st accused and the 2nd child, who is said to be his girl friend, to commit the offence. There is no evidence that the 3rd child had met the 1st accused and the 4th child at the house on the night of the crime. There was no evidence that the 3rd child was aware of the crime or participated in the commission of the crime as she was asleep in her room. There was no evidence that the 2nd or 3rd child had facilitated the entry into the house of the deceased, the 1st accused, the 4th child, or any other person, for the commission of the offence. There was no evidence that the 2nd child knew that the 1st accused would have been outside the house, when she sneaked out of the house through the window of her room, in order to meet Chen Boon Chin (SP13) after her call to him at 12.10am, on 12 November

2003. There was evidence from SP8 that the 3rd child had intended to sneak out of the house ("curi keluar") that night, but the fact she aborted her plan seems to suggest something unexpected and unplanned had occurred.

[95] The fact that the 2nd child sneaked out of the house through her room window seems to suggest that something unexpected had occurred to prevent her from sneaking out via the main door of the house. It is rather odd that the 2nd child should get out of the house through the window of her room and risk a fall or injury to herself. There was no evidence, at all, that she had been locked up and imprisoned in her room after dinner by her parents. SP20, testified that each of them had a set of keys to the house, for convenient ingress or egress of the house at any time, by the respective members of the family living therein.

[96] The prosecution has failed to lead any evidence to explain why the 3rd child had aborted her plans made with SP8 to sneak out of the house. In such circumstances, the court can only be left to speculate and infer on the aborted plan, but such speculations and inferences cannot link the 3rd child with the offence, in order to establish a *prima facie* case against the 3rd child, as the aborted plan with SP8 has no nexus, whatsoever, with the offence charged. Sneaking out of the house by children, when parents exert some measure of control over their liberty, is not an unusual act of defiance and challenge by children, these days!

[97] Although there was evidence that the 2nd child had met the 1st accused, immediately after she had sneaked out of the house through the window of her room, there is no evidence that this was a pre-arranged meeting between them. In any event, there is no evidence as to what was discussed between the 1st accused and the 2nd child, because SP8 did not hear the conversation. Had any common intention or plan to commit any crime, more precisely the crime of murder, surface between the 1st accused and 2nd child at that point of time? And did the 2nd child participate in some way towards the commission of the crime by the 1st accused, in furtherance of that common intention, for example, by giving him the key to the house in order to facilitate his entry? Unfortunately, the prosecution did not adduce any evidence:

A 1) that the 1st accused was seen carrying a weapon at that point of time;

2) that the 2nd child knew the 1st accused had brought along a weapon just before she talked to him, or was fully aware that
B the 1st accused had access to a weapon that he was going to use that night, hidden somewhere in the vicinity;

3) the 2nd child knew that the 1st accused had come to the vicinity with the intention of killing the deceased;

C 4) the 2nd child had handed the keys to her house to the 1st accused.

[98] In the above circumstances, the 2nd and 3rd child cannot be attached with any common intention to commit the offence as
D charged and, in the absence of any circumstantial or direct evidence to show that 2nd and 3rd child had inflicted any of the injuries on the deceased, they must be acquitted without their defence being called.

E **[99]** However, the 1st accused and 4th child were called upon to enter their defence because evidence of blood stains seen on their shirts, after the crime was committed must irresistibly lead to an inference that they were in the house of the deceased at the time the deceased was attacked and, therefore, the perpetrators of
F the crime as well. This evidence must also be taken into consideration with the evidence of Wong Wing Hing about what the 4th child had informed him.

> ... Dexter memberitahu saya ia bersama-sama dengan Jimmy pergi memukul orang. ...
>
> G
>
> Semasa saya masih dalam kereta saya telah menanyakan Dexter, "Siapakah orang ia pukul?" Dia kata bapa orang. ...
>
> ...
>
> H Selepas Dexter habis mandi dia telah duduk atas sofa bersama saya. Semasa itu saya ada bercakap dengan Dexter. Saya bercakap pasal hal tadi. "Hal tadi" bermaksud "pukul memukul" tadi.
>
> Saya tanyakan Dexter "Apakah hal tadi?" Dia kata dia bersama-
> I sama dengan Jimmy memukul bapa orang. Saya telah tanya bila dan mana mereka memukul bapa orang. Dia kata pada waktu kami menjemputnya di stesen minyak Shell, dan Dexter juga telah

memberitahu saya mereka telah memukul orang di rumah sahabat wanita Jimmy. Dexter kata selepas memukul orang dia pun telah menelefon Ah Boon – iaitu pada masa kami sedang minum teh. Saya telah tanya Dexter apakah maksud "memukul orang". Dia kata dia bersama-sama Jimmy telah memukul orang dan mungkin secara tidak sengaja telah menyebabkan kematian. Saya telah menanyakan dia, apakah senjata yang digunakannya. Dia kata, "pisau". Semasa Dexter bercakap sama saya, Jimmy tidak bercakap apa-apa.

[100] Ng Hon Boon (SP18) testified:

Selepas masuk dalam kereta Dexter telah mengatakan bahawa ia telah membunuh seseorang. Pada masa itu kereta sudah bergerak dan mengarah ke rumah Wing Hing di SS17. ....

Sebelum saya tidur saya terdengar Dexter sedang bercakap dengan Wing Hing. Saya dengar Dexter kata dia telah membunuh bapa seseorang. Saya juga terdengar Dexter mengata dia bersama-sama dengan Jimmy telah membunuh bapa seseorang. Dexter bercakap kepada Wing Hing.

[101] There was no evidence from SP17 and SP18 that the "pukul memukul" alluded to by Dexter was instructed by either the 2nd child or the 3rd child. Therefore, there can be no inference of a pre-meditated plan between them.

[102] The 1st accused and the 4th child elected to give evidence on oath, upon being ordered to enter their defence to the charge, at the close of the prosecution's case.

[103] The 1st accused (DW1) testified on his own behalf and did not call any witnesses. The 4th child (DW2) testified on his own behalf and called 2 other witnesses, that is, a Malay Mail reporter (DW3) and Pang Tze Ling (DW4), the sister of his purported girl-friend, Pang Kah Yee.

[104] The 1st accused totally denied he committed the murder, but admitted he was near the vicinity of the house of the deceased, in the early hours of 12 November 2003.

[105] The 1st accused claimed that he came to know Sue Yin towards the end of September 2003 and that she was his girl-friend. They always met at Summit and played video-games.

[106] The 1st accused alleged that in October, 2003, Sue Yin complained to him about her step father and claimed that she had told him that the step father gave her a lot of house work, scolded her, assaulted her and even molested her. He claimed that she alleged that her sister, too, was similarly ill treated by her step father. The 1st accused went on further to allege that Sue Yin had requested him to get someone to beat up her step-father in order to teach him a lesson. Perhaps, I should observe, immediately, that it was never at all suggested to Sue Yin's mother, SP20, by counsel for the 1st accused, of any ill-treatment of Sue Yin by the step-father. Neither was there any suggestion made of any such ill-treatment of Sue Yin and Sue Kin by counsel for 2nd and 3rd child. In the circumstances, this evidence of 1st accused regarding what was told to him by Sue Yin is highly suspect and a total fabrication, or an exaggeration of the purported complaint by Sue Yin to him of her step-father, in the execution of his parental duties over his step-daughters.

[107] Following up from the alleged complaint to the 1st accused by Sue Yin of her step father and her alleged request to have him beaten up, the 1st accused testified he met Hock Meng (SP16) and asked him whether he would be able to get someone to beat up a person. The 1st accused testified that Hock Meng replied he would be able to do so for a fee of RM3,000. He further testified that he told Hock Meng he did not have RM3,000 and, therefore, he need not get the services of the hit-man. The 1st accused testified he conveyed to Sue Yin he was unable to get someone to carry out the assault. Now, the evidence of Hock Meng (SP16) on this issue is slightly different, in that, Hock Meng testified that the 1st accused asked him whether he would be able to get a hit-man for a fee of RM3,000 and that he replied he was not involved in such activities, that is, of killing people.

[108] The 1st accused testified:

> Pada suatu hari saya berjumpa seorang bernama Hock Ming di Summit. Saya tanya pada beliau "bolehkah kamu menolong saya untuk dapatkan seorang untuk memukul seseorang?" Hock Ming jawab beliau boleh tolong saya mendapatkan seorang sebegini tetapi perlukan bayaran RM3,000. Saya bagitahu Hock Ming, saya tiada wang RM3,000. Oleh itu kamu tidak perlu cari orang bagi saya. Selepas itu saya memberitahu Ku Sue Yin saya tidak dapat mencari orang.

[109] Lee Hock Meng (SP16) testified:

> Pada awal bulan November 2003 saya ada berjumpa dengan Jimmy di Summit, di satu tempat makan berdekatan pawagam. Di tempat sana Jimmy tanya saya "Adakah anda mendapat seseorang untuk membunuh orang dengan wang upah sebanyak RM3,000?" Dia kata, orang yang hendak dibunuh ialah bapa kepada seorang gadis.
>
> Saya tidak tahu kenapa Jimmy kata sebegitu.
>
> Saya jawab "Saya tidak ada". Maksud saya, saya tidak membuat hal membunuh orang.

[110] Yet, in direct conflict to his testimony in his defence, 1st accused, through his counsel in cross-examination of SP16, seemed to suggest that the issue of the 1st accused approaching SP16 about getting a hit- man, is a complete lie.

[111] Cross-examination of SP16 by counsel for 1st accused:

> ...
>
> Soalan: Cadangkan semua keterangan yang kamu memberi tidak benar?
>
> Jawapan: Saya tidak setuju.
>
> Tiada apa-apa masalah diantara saya dan Jimmy.
>
> ...
>
> Saya bukan seorang pembunuh upahan.
>
> Soalan: Katakan Jimmy berjumpa kamu untuk membunuh seseorang untuk RM3,000 adalah tidak benar?
>
> Jawapan: Tidak setuju.
>
> Soalan: Katakan Jimmy tidak memberitahu kamu bahawa orang yang hendak dibunuh ialah bapa kepada seorang gadis?
>
> Jawapan: Tidak setuju.

[112] Both, the 1st accused and the 4th child, in their defence introduced a mysterious character called Ivan, who was never called at all as a witness, and whose whereabouts they do not appear to have a clue. There was an attempt to shift all blame for the murder on to Ivan, and to implicate him at every available opportunity – from the purchase of the parangs to his presence

A inside the house of the deceased, on the night in question. The defence went so far as to suggest that Ivan was in fact the boy-friend of Sue Kin and yet Sue Kin was never called to testify on this. There was no suggestion made to the investigating officer that the police had been informed about Ivan's role and that he B was the boy-friend of Sue Kin. In the final analysis, I am of the opinion that Ivan was a character skillfully introduced by the defence in an attempt to cast doubts on the prosecution's case. With great regret, on the totality of the evidence before me, Ivan finds no place in the house of the deceased, either by design or C accident, and obnoxious to the cause of justice, as he has been cleverly introduced to detract focus and culpability on the 1st accused and the 4th child.

[113] The 1st accused testified that on 9 November 2003 he met D the 4th child (DW2) and Ivan at Summit. They then proceeded in Ivan's car to the food court. After having had their food, Ivan took them home in his car, but along the journey home, Ivan stopped at a hardware store to buy a parang, as he needed same to protect himself. The 1st accused testified that when they E reached the hardware shop Ivan instructed him to inquire if there were parangs for sale in that shop. The 1st accused and the 4th child entered the hardware shop whilst Ivan went to park the car. The 1st accused testified he inquired from a male Malay at the shop whether there were parangs for sale. The 4th child was at F that time standing behind him. The male Malay had taken out a parang for inspection by the 1st accused. At that point of time, Ivan entered the shop and asked the male Malay in the shop whether there were other parangs for sale. A male Chinese working in the shop then took Ivan to the back of the shop.

G

[114] The 1st accused testified that after he had inspected the parang, shown to him by the male Malay at the counter, he handed it over to the 4th child to inspect. At that time, Ivan came to the front portion of the shop from the back, with a H parang in hand. Ivan then took the parang from the 4th child's hand and then made the payment for the purchase of the parangs. The 1st accused testified, that as they were leaving the shop, the Malay male in the shop asked Ivan whether he was buying the parang because he wished to kill somebody, and that Ivan replied in the affirmative. The 1st accused further testified that Ivan I brought the two parangs out of the shop in a plastic bag, and carried them to his car.

[115] The 1st accused denied that exh. P22 was the same parang he had seen at the hardware shop on 9 November 2003.

[116] The 1st accused claimed that he was a close friend of the 4th child and that the 4th child had told him Ivan was a member of a secret society and was always involved in fights.

[117] The 1st accused testified, that on 10 November 2003 he again met the 4th child and Ivan at the Summit. After playing video games they went to the food court. At the food court, while they were seated talking, the 1st accused informed the 4th child and Ivan that Sue Yin and Sue Kin had been abused by their step-father. Whilst they were talking, Ivan received a call. The 1st accused testified that Ivan said the call was from Sue Kin and that Sue Kin was his girl-friend. Ivan said that Sue Kin wanted Ivan to help her run away from the house as she could not endure the abuse of the step father anymore.

[118] The 1st accused testified that Ivan then invited the 4th child and the 1st accused to join him to "run away" Sue Kin the following day, at 12 midnight. The 1st accused testified that before he could reply Ivan, he received a call from Sue Yin who told him that Ivan was going to come to "run away" Sue Kin. She requested him to go to her house at 12 midnight, the next day to "run away" from the house.

[119] The 1st accused testified, *inter alia*:

> Kemudian Ivan terus tanya pada saya dan Dexter, adakah kami berdua ingin bersama Ivan pada hari keesokan untuk bersama membawa perempuan tersebut Ku Sue Kin melarikan diri dari rumahnya pada tengah malam. Dia ada memberitahu pada tengah malam ibu dan bapa tirinya akan tidur pada masa itu. Sebelum saya sempat menjawab Ivan, telefon bimbit saya juga berbunyi dan saya menjawab panggilan telefon dan panggilan itu adalah dari teman wanita saya.
>
> Dalam perbualan telefon itu Ku Sue Yin memberitahu saya bahawa Ivan akan membawa Ku Sue Kin lari dari rumah bersama-samanya dan seterusnya Ku Sue Yin meminta saya pergi ke rumahnya pada tengah malam hari keesokkan untuk membawa beliau melarikan diri dari rumah dan pada masa tengah malam ibu dan bapa tirinya akan tidur pada masa itu. Saya berjanji Ku Sue Yin bahawa saya akan pergi ke rumah beliau pada hari keesokkan waktu tengah malam membawa beliau melarikan diri dari rumah.

[120] The 1st accused testified that, on 11 November 2003, after his class was over at his College, he went to the Video Games Centre at about 6.30pm, and there met Dexter (DW2), Kah Yee and Tze Ling (DW4). While he was playing video games together with Dexter, Kah Yee and Tze Ling, he saw Ivan coming. Then, at about 9pm Dexter, Kah Yee and Tze Ling left the video centre. The 1st accused testified that he then walked alone in the vicinity of Summit and then returned to the Video Games Centre at about 10pm. He met Ivan again and Ivan requested him to contact Dexter, and meet both of them at Summit.

[121] The 1st accused alleged he contacted Dexter over the phone, as instructed by Ivan, and soon thereafter Dexter joined them at the Summit. Ivan then informed them that he (Ivan) was going to "run away" Kue Sue Kin and her sister from their house that same night and asked Dexter whether he could make a car available, as his car was in the workshop. The 1st accused testified:

> Tidak lama kemudian Dexter sampai semula di Pusat Video Games. Kemudian Ivan memberitahu kami bahawa beliau akan membawa teman wanitanya Ku Sue Kin bersama adik perempuannya untuk melarikan diri dari rumah mereka pada malam ini. Kemudian Ivan tanya Dexter samada boleh dapatkan kereta atau tidak.

[122] The 1st accused testified, that from Summit he went, together with Ivan and Dexter, by taxi to Subang Permai. However, on the way Ivan allegedly asked Dexter to get off at a Shell petrol station, which had already closed at that time of the night and was in darkness. It was alleged by the 1st accused in his evidence that Ivan asked Dexter to await his call and make available a car. He testified he knew that the car was to be used to run away the two girls.

[123] After dropping off Dexter at the Shell station, the 1st accused testified that Ivan and he proceeded in the same taxi to Sue Yin's house.

[124] The 1st accused further testified that he and Ivan got off the taxi near a coffee shop within the vicinity of Sue Yin's house. After the 1st accused got off the taxi he alleged he told Ivan that he wanted to buy a packet of cigarettes, whereupon, Ivan told him he would go alone and meet Sue Kin first.

[125] The 1st accused saw Ivan walk towards Sue Kin's house when he went to buy a packet of cigarettes from the coffee shop. The 1st accused testified that after smoking a cigarette he walked towards the house of Sue Yin and accidentally met Sue Yin. He saw a male Indian and a female Chinese behind Sue Yin.

[126] The first accused testified the place where he accidentally met Sue Yin was very near her house. The first accused was surprised to meet Sue Yin outside her house as Sue Yin herself had asked him to bring her out of the house on 10 November 2003. He embraced her and kissed her. He asked her how she had got out of the house. She explained that she had got out of the house through the window. He testified that Sue Yin asked him to wait for Sue Kin and Ivan in front of the house. She would wait for them at the coffee-shop near her house. The 1st accused testified he then walked to the front of Sue Yin's house and waited in front of the gate.

[127] The 1st accused waited for a while in front of the gate and then climbed over the gate into the compound of the house. He testified he did that for two reasons:

1) he did not want anyone to see him outside the gate and suspect him to be a burglar;

2) he wanted to ascertain whether Ivan and Sue Kin were ready to leave the house.

[128] However, when he did not see Ivan and Sue Kin upon entering the compound, he climbed out over the gate to the front as it struck him that probably Ivan and Sue Kin would make their exit from the house through the back of the house, in the same manner as Sue Yin.

[129] After climbing out over the front gate, the 1st accused testified, he saw only Sue Yin and her 2 friends waiting at the coffee-shop. He waited for a while and then became anxious when Sue Kin and Ivan did not emerge. He decided to climb over the gate back into the compound of the house, and no sooner had he done so, he heard a scream. He was shocked and frightened. He quickly climbed out over the front gate and ran towards the Shell petrol station.

[130] The 1st accused testified, that upon reaching the Shell station, he saw Dexter, who inquired about Ivan and the two girls. The 1st accused informed Dexter that Ivan and Sue Kin were probably caught inside the house by Sue Kin's parents, whereas his girl-friend, Sue Yin, was at the coffee-shop.

[131] The 1st accused testified, that while he was talking over the telephone from the Shell station to his girl-friend, he saw Dexter making a phone call, and soon thereafter, a car arrived. There were three persons inside the car. The 1st accused testified that at that time he was wearing a blue coloured T-shirt and it was the same T-shirt that he had worn to College that day (11 November 2003). He claimed the T-shirt he wore did not have any blood stains when he entered the car which arrived at the Shell station. It probably had traces of dirt. He further testified the trousers he wore that night was black. He testified that Dexter, too, wore a blue T-shirt and black trouser that night.

[132] The 1st accused denied exh. P30 was the blue T-shirt he wore that night. He also denied exh. P32 was the jeans he wore that night.

[133] The 1st accused testified that he and Dexter entered the car soon after it arrived at the Shell station. He said he saw Wing Hing talking with Dexter whilst inside the car but he did not pay attention to their conversations. He testified he did not do anything inside the car and remained quiet, as he was tired after running from the house of Sue Yin to the Shell petrol station.

[134] The 1st accused testified that at Wing Hing's house Dexter went upstairs and had a bath. After that, he himself had a bath. After his bath he left his T-shirt in the bathroom. He testified:

> Selepas mandi saya letakkan baju-T biru muda saya didalam bilik mandi dan kemudian saya turun ke tingkat bawah. Selepas mandi saya dan Dexter tidak memakai baju sewaktu berada di tingkat bawah, duduk atas sofa. Dexter dan saya masih pakai seluar masing-masing.

[135] The 1st accused testified, that from Wing Hing's house, he went back to Sunway to meet Sue Yin behind his flat at a coffee-shop, but before going there, he borrowed a blue coloured T-shirt from Wing Hing. When questioned by Court why he did not wear his own T-shirt, he said it had paint stains (dirt) and he left it in the bathroom, at Wing Hing's house. He testified:

Sebelum balik ke Sunway saya pinjamkan sehelai baju-T berwarna biru daripada Wing Hing.

[Questioned by Court:

Saya tidak memakai baju-T saya yang asal kerana ada kotoran cat dan saya letak dalam bilik mandi rumah Wing Hing]

[136] Later in his testimony, he explained he did not take back the shirt because it had an offensive smell.

Kotoran pada baju-T saya yang saya tinggal di bilik mandi rumah Wing Hing adalah terkena semasa saya panjat masuk dan keluar pintu gate rumah Sue Yin. Saya tidak pasti samada kotoran itu cat atau tidak. Saya tidak ambil T-shirt pulang kerana bau busuk. Saya memang cadang untuk mengambil balik T-shirt tersebut.

[137] The 1st accused, in his attempt to discredit the police and cast doubts on their integrity, with respect to the exhibits produced in court, found himself unwittingly caught up in his own web of lies.

[138] This is particularly so with respect to the retrieving of his shirt from Wing Hing's house and the evidence of the shirt and trousers seized from his house produced in court. He said he contacted Dexter on 13 November 2003, to retrieve his shirt.

[139] [NB: Dexter was arrested on 12 November 2003 and was in police custody on 13 November 2003]

[140] The 1st accused testified:

Sehingga polis datang tangkap saya pada 15/11/03, saya belum pergi ambil balik baju-T yang saya tanggalkan di bilik air rumah Wing Hing pada 12/11/03 kerana saya tidak tahu dimana rumah Wing Hing. Saya ada tanya pada Dexter dimana rumah Wing Hing pada 13/11/03 tetapi Dexter memberitahu belum senang lagi tolong saya ambil baju-T.

...

Polis yang ambil baju dan jeans pada 15/11/03 di rumah saya telah masukkan pakaian tersebut ke dalam satu beg plastik. Semasa mahu membawa saya keluar dari rumah polis itu juga telah ambil sepasang kasut di luar rumah saya.

Barang kes P30 (T-shirt) bukanlah baju yang diambil oleh pihak polis dari rumah saya sebab baju-T yang diambil dari rumah saya ialah berwarna biru.

A Saya tidak pasti samada barang kes P32 (jeans) adalah yang diambil dari rumah saya kerana polis tidak tunjukkan kepada saya. Cuma saya nampak ada sehelai jeans biru. Saya nampak dari ruang tamu.

B **[141]** The defence of the 1st accused, in a nut-shell, is one of a total denial of the commission of the offence charged, and that he was never inside the house of the deceased at the time the deceased was assaulted. If anyone was inside the house at the time of the murder, it was the 3rd child and her boyfriend, one mysterious Ivan. The 1st accused testified:

C

Apa yang saya ingin memberitahu Mahkamah bahawa saya tidak pernah membunuh orang tetapi apa yang saya silap buat dalam kes ini iaitu membawa teman wanita saya untuk melarikan diri dari rumah.

D **[142]** The defence of the 4th child (DW2) is almost identical to that of the 1st accused with regards to the events that occurred on 9 November, 10 November and 11 November 2003 and the evidence pertaining to the mysterious Ivan.

E **[143]** The 4th child testified that on 11 November 2003, he received a call from his girl friend, Kah Yee, at about 5.30pm. He went to her house, wearing a blue T-shirt and a black jeans. He took Kah Yee and her sister, Tze Ling (DW4), to the Video Games Centre at Summit. There, he met the 1st accused, and F later saw Ivan coming to the video centre. He testified that as Kah Yee complained she was already tired, he sent Kah Yee and her sister back to her house. He arrived at Kah Yee's house at about 9.30pm. While he was with Kah Yee in her room upstairs, Tze Ling (DW4) came up to her sister's room at about 10pm and G handed him her phone saying there was a call for him from the 1st accused. The 1st accused told him that Ivan wanted to meet him. Although he intended to spend the night with his girl friend Kah Yee, he reluctantly went to meet Ivan, after telling DW4 he was going out for a short while. Apparently, he did not inform Kah H Yee he was going out (to meet Ivan), as she was already asleep.

[144] The 4th child testified, that when he arrived at Summit, Ivan told him he needed his help to get a car, as he did not have any friends who had a car and his car was in the workshop. The I 4th child agreed to help Ivan get a car. Then, from Summit they left by taxi for Permai, after 11pm. The taxi stopped at a Shell petrol station. Ivan asked him to get down from the taxi and wait for him and the 1st accused. He testified:

Saya tidak tahu mana Ivan dan Jimmy hendak pergi. Dalam perjalanan teksi berhenti di Shell station. Ivan suruh saya turun di sana. Ivan suruh saya tunggu beliau dan Jimmy di sana. Mereka ingin pergi bawa 2 teman wanita mereka dan Ivan bagitahu mereka akan berjalan balik ke Shell bersama-sama dengan 2 orang wanita itu. Saya memberitahu saya akan tunggu di Shell seorang diri. Saya tahu Jimmy dan Ivan pergi ke rumah teman wanita mereka naik teksi yang sama. Saya tidak tahu dimana rumah teman wanita Jimmy dan Ivan.

Saya turun di Shell station lebihkurang 11.30 malam. Di sebelah Shell ada sebuah kedai kopi. Saya pergi makan di sana selepas diturunkan di Shell. Pada masa itu Shell tutup. Lampu di Shell tidak menyala.

... Selepas saya makan saya telah pergi ke Shell station sambil merokok dan menunggu Ivan, Jimmy dan 2 teman wanita.

[145] The 4th child testified that from the Shell station he did not go anywhere, else besides the coffee-shop. From the Shell station he did not go in search of Ivan and Jimmy. Then he saw Jimmy come alone and he asked Jimmy why Ivan and the two girls did not come together with him. Jimmy replied that probably Ivan and his (Ivan's) girl friend had been caught by the parents of the girl when they were leaving the house, whereas his girl-friend, Sue Yin, had already come out of the house and was waiting at a coffee-shop near her house, with her friends. The 4thchild testified he then tried to contact Ivan on his hand-phone but was unable to get through. He could not remember Ivan's phone number but alleged he had Ivan's phone number in the phone book of his hand-phone, which was seized by the police when he went to the police station with his lawyer (on 12 November 2003) ,and the police to-date had not returned same to him. When he failed to contact Ivan he telephoned Wing Hing to come and pick him up at the Shell station. He had not decided where to go from the Shell station when he called for Wing Hing to come and fetch him. After 20 or 30 minutes a car arrived with three persons inside and one of them was Wing Hing, while another was Hon Boon. The 3rd person was the driver whom he did not know.

[146] He entered the car together with the 1st accused. Wing Hing asked him what he was doing there and he replied that actually his friend and Jimmy wanted to bring along their girl friends in order to run away.

[147] The 4th child testified that Wing Hing asked him to go to his house for a while. He agreed, and they arrived at Wing Hing's house at about 1am.

[148] The 4th child, the 1st accused, SP17 and SP18 entered SP17's house. The 4th child testified that SP18 straight away took a mattress and slept on the floor, while the others sat on the sofa.

[149] The 4th child testified he told SP17 that he wanted to have a bath. He took off his shirt and left it on the arm of a sofa and went upstairs. After about 10 or 15 minutes he came downstairs and rested on the sofa. The 1st accused then went upstairs to bathe. The 4th child denied he told anything to SP17 about his friends and their girl friends.

> Dalam rumah Wing Hing saya tidak ada cakap pada Wing Hing tentang kawan-kawan saya dan teman wanita mereka.

[150] The 4th child testified he telephoned his girl friend Kah Yee between 1am and 2am and told her he was at SP17's house. About half an hour later, Kah Yee, Tze Ling (DW4) and SP17 came to SP17's house. At that time, the 4th child, testified he and the 1st accused were not wearing a shirt (ie, they were topless) and all of them were engaged in conversation whilst seated on the sofa. Then SP19 sent 1st accused to Sunway together with SP17 and DW4. The 4th child, Kah Yee and SP18 remained in SP17's house. Then between 5am and 6am, DW4 returned alone to SP17's house. The 4th child testified,that together with Kah Yee and DW4,he went to Kah Yee's house in a taxi. He testified he wore his original blue T-shirt when he left SP17's house.

[151] The 4th child arrived at Kah Yee's house between 5-6am (on 12 November 2003) and he slept at her house till about 9am. His mother rang him and scolded him, She informed him that his father would come to fetch him. At about 10am his father arrived at Kah Yee's house to pick him up. He did not tell his father the truth about the previous night's events.

> Bapa datang pada 10.00 lebih pagi. Bapa tanya saya, "Semalam pergi mana?" Saya memberitahu dia, saya berada di rumah Kah Yee. Bapa saya ada marah saya.

> Saya tidak memberitahu bapa saya, saya ada pergi ke stesen Shell dan rumah Wing Hing.

[152] On arriving at his house at about 10am (12 November 2003) he was scolded by his mother. He entered his room, changed his shirt, placed his shirt in the clothes basket and slept till about 2 or 3pm.

[153] The 4th child testified that between 3 and 4 pm the 1st accused telephoned him and told him he was going to JB the same day. The 1st accused told the 4th child that the 1st accused had left 1st accused's shirt in SP17's house but 4th child replied, "tak apa nanti saya akan ambil untuk kamu".

[154] The 4th child testified, that at 7pm, on 12 November 2003, he read in the newspaper (exh. D82) a report to the effect that the girl-friend of Jimmy was missing and a member of her family had died. He then informed his father what he had done the previous night. His father then took him to consult a lawyer. Then, between 8 and 9pm, the 4th child, together with his father and lawyer, went to the police station, where, subsequently, he was detained by the police, the same night. The 4th child alleged, that the next day, he was taken by the police to his house, and the police seized a shirt, a pair of trousers and slippers.

[155] The 4th child also testified, that at an identification parade, he stood beside the 1st accused, and although 1st accused was identified, nobody identified him at the parade.

[156] The 4th child's defence, in a nutshell, is similar to that of the 1st accused, in that, on the night in question, he did not enter the house of the deceased and assault the deceased. His only role on that night was to arrange for transport, at the request of Ivan, in order to carry out the run-away plan of Ivan and Jimmy of their girl-friends, Sue Kin and Sue Yin, respectively, from their home on the night of 11 November 2003.

[157] The defence of the 1st accused and the 4th child must be considered in the totality of the evidence adduced by the prosecution, as well as in the light of the well established principles enunciated in *Mat v. PP* with regard to the approach to be taken by the court in evaluating the evidence of the defence, even if the court does not believe the defence version of events.

[158] In the final analysis, has the defence created any doubts in the prosecution's case on any crucial element having a direct bearing on the charge? Has the prosecution discharged its burden of proving its case beyond a reasonable doubt, upon a maximum evaluation of all the evidence before the court, at the conclusion of the trial? The re-evaluation of prosecution's case at the conclusion of the defence case is essential, to determine whether the 1st accused and the 4th child could be held culpable of a lesser offence than originally charged, should there be any doubts in the mind of the court with reference to the charge arising from the nature of the defence in this case – which in fact is a bare denial, for all intents and purposes.

[159] There is no dispute that the deceased was attacked only within his house, and died within his house from the injuries sustained. In such circumstances, it is crucial for the court to make a finding whether the 1st accused and the 4th child were inside the house of the deceased at any time, as their defence on oath clearly suggests that they did not even step a foot inside the house of the deceased on the night of the incident! It is only upon a finding that the 1st accused and the 4th child were in fact inside the house at same point of time that night, can the court proceed to evaluate the culpability, if any, of the 1st accused and 4th child for the alleged offence, or any other lesser offence.

[160] The most incriminating evidence, against the 1st accused and the 4th child, irresistibly suggesting that they were in fact inside the house of the deceased that night, is the evidence relating to the T-shirt worn by them on the night of the incident.

[161] The original T-shirts worn by the 1st accused and the 4th child at time of the alleged offence were never produced in court as they were obviously never recovered The T-shirt, exh. P30, which was seized from the 1st accused's house on 15 November 2003 was grey in colour and had blood stains bearing the DNA profile of the deceased. The prosecution did not allege that exh. P30 was the T-shirt worn by the deceased, at the time of the crime. It is also clear from the evidence of the 1st accused that he had a bath at SP17's house and had removed the T-shirt he wore that day and left it in the bathroom at SP17's house. The 1st accused had never retrieved that T-shirt at any time before his arrest and hand it over to the police. He allegedly had worn a blue T-shirt on the day of the alleged crime. The fact that 1st accused had a bath and left the said T-shirt in the bathroom,

coupled with SP18's evidence that he had seen stains on his shirt at the time 1st accused entered the car at the Shell petrol station, is clear indication of the fact the 1st accused must have been very near the deceased at the time the deceased was attacked, or soon thereafter. This must clearly bring him within the house of the deceased on the night of the incident, and therefore, his evidence that he was only within the compound of the house of the deceased and then ran away to the Shell petrol station upon hearing a scream coming from within the house of the deceased, cannot be true, and is a complete lie. No doubts were created in my mind by the fact the T-shirt, exh. P30, was grey in colour. I dismiss, as totally unfounded, any suggestion by the 1st accused that the police are concealing evidence favourable to the 1st accused. The 1st accused's own testimony, that he had left behind his T-shirt at Wing Hing's (SP17's) house, completely negatives any such conduct by the police. The fact that exh. P30 was seized from 1st accused's house (flat) is beyond dispute. There was no suggestion made to the I.O. (SP23) or SP26 by the 1st accused that exh. P30 was seized by the police from some other place and substituted for a blue T-shirt allegedly seized at 1st accused's flat on 15 November 2003, but never produced in court.

[162] Blood stains on exh. P30 which had the DNA profile of the deceased is not proof that P30 was the very T-shirt worn at the time of the crime, either by the 1st accused or any other person. P30 could very well be the T-shirt 1st accused wore in place of his original T-shirt when he left SP17's house, and the blood stains from the original T-shirt worn by the 1st accused, at the time of the crime, could have come into contact with P30 at same stage or other, unknown to the 1st accused. Alternatively, the T-shirt, exh. P30, could very well have come into contact with some un-washed off blood on the body of 1st accused when he donned the shirt. In the circumstances, it is my finding that the 1st accused was definitely inside the house of the deceased, on the night the deceased was attacked with a parang.

[163] Now, with respect to the 4th child. Was his role only to await at the Shell petrol station that night, and therefore, could never have been inside the house of the deceased with the 1st accused? The answer must again rest heavily on the incriminating evidence that the 4th child had a bath at SP17's house soon after he reached SP17's house, coupled with SP17 and SP18's evidence that blood stains were seen by them on his shirt.

[164] The evidence, that he changed his T-shirt after the bath, and that blood stains were seen on his shirt when he entered the car at the petrol station, must irrefutably suggest that the 4th child was most certainly inside the house of the deceased, at the time the deceased was attacked or soon thereafter. His evidence, that he was dropped off at the Shell petrol station, and that he was waiting at the petrol station for the arrival of Ivan and Jimmy with their respective girl-friend, is definitely a blatant lie. His evidence, that the police had seized a shirt in his house on 13 November 2003, is clearly a lie, too, because the police had not produced any shirt in court seized from his house. His attempt to create doubts that the T-shirt worn by him on the day of the incident had any blood stains, because the police did not produce it, is misconceived, and has failed totally to enhance his defence. The fact that his own counsel had suggested to SP17, in cross-examination, that the 4th child had changed his shirt inside the car and not at SP17's house, flies in the face of the defence of the 4th child.

[165] SP17 had testified that he saw blood stains on the 4th child's shirt, and that after the 4th child had his bath he wore SP17's shirt. The testimony of the 4th child, that the original blue T-shirt worn by him on the night of the incident, was seized by the police on 13 November 2003 from his house, but was not produced in court cannot be believed. There was no suggestion to the I.O. that a blue T-shirt, worn by the 4th child on the night of the incident, was seized by the police on 13 November 2003. It was never suggested to the I.O. (SP23) that the said blue T-shirt was the very same T-shirt worn by the 4th child at/or about the time of the alleged crime. It was never suggested to the I.O. that the said blue T-shirt was never sent to the chemist. It was never suggested that the said blue T-shirt did not bear any blood stains matching the DNA profile of the deceased.

[166] In the above circumstances, I am satisfied that the police did not in fact go to the house of the 4th child on 13 November 2003, nor did the police seize a blue T-shirt from the house.

[167] On the totality of the evidence, I am satisfied that the 4th child did in fact change his shirt after a bath at SP17's house, and that there were blood stains on his original T-shirt. In such circumstances, it is my finding that the 4th child was inside the house of the deceased, at the time the deceased was attacked with a parang (exh. P22).

[168] In the light of the defence having introduced a mysterious character called Ivan, I think I have to make a finding as to whether this Ivan did play any role in the commission of the offence.

[169] I am of the view that Ivan is a figment of the imagination of the defence, in order to create doubts in the prosecution's case, as to the culpability of the 1st accused and the 4th child, for the offence charged.

[170] Ivan was introduced as a character in a run-away plan of the two girls (Sue Yin and Sue Kin) only at the defence stage. He was made out to be the boy-friend of Sue Kin and yet it was never suggested to any of the prosecution witnesses that Sue Kin had a boy-friend, called Ivan. Sue Kin too, was not called as a witness to testify that Ivan was her boy-friend. It was never suggested to any of the prosecution witnesses, particularly SP17, that the 1st accused and Ivan had gone to the house of the deceased to execute a run-away plan of the girls, while the 4th child remained in the Shell petrol station to await the arrival of them.

[171] It was never suggested to any of the police witnesses, particularly SP23 and SP26, that the 4th child had informed them of the existence of Ivan and the role played by Ivan, on that day. It was never suggested to SP23 that the 4th child had told one Insp. Kwok about Ivan when he went to the police station on 12 November 2003, together with his lawyer and father, to give information to the police concerning what he had read in the newspaper (D78).

[172] It is my finding that all allusion to one Ivan, by the 1st accused and 4th child in their defence, is nothing more than a red herring to shake off any culpability of 1st accused and 4th child. It is my finding, on the totality of the evidence, the mysterious character Ivan does not exist, and he played no part, whatsoever, in the events which unfolded. There is no dispute that the 4th child does not know Ku Sue Kin, at all. However, 1st accused and 4th child are close friends. On the other hand, the 1st accused clearly seemed concerned about the alleged abuse of his girl friend, Sue Yin, by the deceased. Therefore, the 1st accused obviously had a motive to assault the deceased. It would be no surprise to find the 1st accused enter the house of the deceased, in the middle of the night, to carry out any plan to assault or frighten the deceased and teach him a lesson for having abused

his girl friend. The 4th child, who is a close friend of the 1st accused, obviously gave him support and courage by accompanying him to execute the plan to assault the deceased, on 11 November 2003, upon being called out by the 1st accused, when the 4th child was at his girl-friend's house. The 1st accused and 4th child proceeded together from Summit by taxi to the deceased's house. How the 1st accused and 4th child got into the house of the deceased, is questionable, and a matter of speculation. There is no evidence of any forced entry into the house by any intruder after the deceased and his wife went up to their bedroom at about 11pm.

[173] In view of my finding that the character Ivan does not exist, and therefore, was not present at all in the house of the deceased, it is now left for me to consider what actually the 1st and 4th Child did in the house, to occasion the presence of the deceased's blood stains on their shirts.

[174] As the 1st accused and 4th child have totally denied their presence inside the deceased's house, and accordingly not given any evidence as to what they did in the house, I can only infer, from the available evidence, as to what transpired inside the house.

[175] Based on the testimony of SP20, it is clear that there were only 2 persons inside the room of Sue Yin. In view of my finding that 1st accused and 4th child were inside the house of the deceased, and in the absence of evidence of any other intruders, I find that it was the 1st accused and 4th child who were inside Sue Yin's room. Based on SP20's evidence, it is clear that one of them had attempted to attack her when she opened the door of Sue Yin's room. It is also my finding, that upon deceased going to investigate who the intruders were, he was attacked inside the room (of Sue Yin) by one of them with a parang. However, I am unable to determine, on the evidence, whether it was the 1st accused or the 4th child who attacked him. Nevertheless, it is obvious that at that stage there was no intention at all to kill the deceased, otherwise they would have pursued him to his bedroom, after the attack on him in Sue Yin's room. Again, based on SP20's testimony it is safe to infer, that because the deceased had not returned to Sue Yin's room, but, instead, had run downstairs, he must have been aware that the 1st accused and 4th child were attempting to flee from the house, after the initial attack on him in Sue Yin's room, without intending to cause him any further

injury. Nevertheless, it would appear that the deceased was determined, either to apprehend them or put up a fight with them, in the belief, in all probability, that his superior physical build (117 Kg) in contrast to the puny size of the 1st accused and 4th child, would enable him to overpower them. Unfortunately, this must have triggered a further attack on the deceased downstairs, either by the 1st accused or the 4th child, when he attempted to overpower them on their way out of the house. In all probability, the fatal injury must have been inflicted, unintentionally, in this "fight" downstairs.

[176] Again, based on the testimony of SP20, who testified that she saw one of the intruders running downstairs when she opened her bedroom door, and that he came back towards her, it can be inferred that this person could be no other than either the 1st accused or the 4th child in the process of fleeing out of the house, after placing the parang neatly away on the window sill of Sue Yin's room, immediately before, or after the collapse of the deceased, downstairs.

[177] It is my finding, that as there was clearly no intention to kill the deceased, the 1st accused and 4th child cannot be found guilty of the offence of murder under s. 302 Penal Code, notwithstanding the 23 injuries found on the deceased and the nature of the weapon used – a 22 inch parang (exh. P22). Bearing in mind that it is difficult to infer who actually inflicted the injuries with the parang on the deceased, and the fact that only 1 weapon was recovered, justice would be done if both of them are given the benefit of the doubt for the commission of the offence under s. 302 Penal Code, but, instead, found guilty only of the lesser offence of culpable homicide not amounting to murder, under s. 304 Penal Code, 2nd limb.

[178] In the above circumstances, the 1st accused is found guilty and convicted of the offence under s. 304 Penal Code, 2nd limb. There shall be recorded a finding of guilt as against the 4th child for an offence under s. 304 Penal Code, 2nd limb.

Sentence

[179] Probation reports on both the 1st accused and the 4th child were produced and read before sentencing. The probation reports tendered by the probation officer, Cik Noor Anizah binti Mat, were marked as exhs. P83 and P84. The 1st accused was 18 years 10 months old at the date of the offence, and 21 years two

days old at the date of sentence. The 4th child was 17 years 10 months at the date of the offence, and 20 years three months old at the date of the sentence.

[180] After considering the respective plea in mitigation by counsel, the respective probation reports, and upon taking into consideration the serious nature of the offence, the 1st accused was sentenced 10 years imprisonment from the date of his arrest (15 November 2003) and the 4th child ordered to be imprisoned for 10 years from his date of arrest (12 November 2003).

[181] The evidence adduced in the trial shows that the offence was committed rather boldly with adult-like courage, planning and execution, and thereafter, steps taken with such astuteness to cover their tracks and divert attention with red herrings, to mislead the court. The nature of the defence put forward clearly showed no remorse by them. An innocent life has been snuffed out in the safety of his own home. It is preposterous to expect the court to treat the perpetrators of the crime with kid gloves merely because they were very young, and one of them fell within the definition of "child", in the context of the Child Act 2001. He was only two months short of the legal age of majority. The facts did not disclose that both the offenders had been subjected to any peer pressure or undesirable influence of the electronic or print media to commit this offence. There were no mitigating factors at all in the commission of the offence – even immaturity of youth did not surface. It was an obvious display of bravado for the benefit of their girl-friends, particularly, by the 1st accused.

[182] Serious crimes committed by youth seems to be on the rise and wrong signals would be sent to youths and the public at large into believing that the courts would be ever so indulgent to treat them with kid gloves, should they ever be convicted of such crimes, if deterrent sentences are not meted out to impress upon these youths and like-minded offenders that crime does not pay.

[183] I completely agree with Sharma J in *Tan Bok Yeng* [1972] 1 MLJ 214 when he said that the social needs of the time have to be met. Offenders committing serious crimes of violence and injury upon their victims should be placed safely away for as long as possible so that they will not be a threat to the public by their irrational or brazen acts of violence totally disproportionate to anything done by the victim against the perpetrators at anytime. Public interest must always over-ride personal interest of offenders when considering the appropriate sentence for any crime.

[184] In *Koay Teng Soon & Anor v. PP* [2002] 2 AMR 1357 the 1st appellant was 18 years old and the 2nd appellant was 17 years old at the time of the commission of the offence. The Court of Appeal considered a sentence of nine years imprisonment as appropriate for an offence punishable under s. 304 Penal Code notwithstanding the fact the appellants were only teenagers. The Court of Appeal quoted with approval Sharma J in *Tan Bok Yeng v. PP* and Hashim Yeop Sani J (as he then was) in *PP v. Loo Choon Fatt* [1976] 2 MLJ 256.

[185] Sharma J in *Tan Bok Yeng v. PP, supra,* at p. 215 said:

> I am quite aware that the law does provide for a lesser sentence or no sentence at all imposed upon persons of young age. There has, however, emerged in recent years in our society certain species of crimes which the alacrity of mind and body, the dare, dash and defiance of youth alone is capable of performing and producing. Law cannot, in my view, remain merely a static and a meaninglessly, ornamental and an orthodox instrument of justice, ineffective in its result and application. The social needs of the times have to be met and effectively met. It is not merely the correction of the offender which is the prime object of the punishment. The considerations of public interest have also to be borne in mind. In certain types of offences a sentences a sentence has got to be deterrent so that others who are like-minded may be restrained from becoming a menace to society.

[186] In the above circumstances, I am of the view that the maximum sentence of 10 years imprisonment on the 1st accused and the 4th child is appropriate, as public interest far out-weighed any personal interest of the offenders. I wish to stress, that in my view, there were no mitigating factors at all in the commission of the offence. Serious injuries were inflicted upon the deceased within the safety and comfort of his own house, at a time when the 1st accused and the 4th child had no business to be inside the premises of the deceased, at all.